

93
No. 191.

UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE
NINTH CIRCUIT.

Occidental & Oriental Steamship
Company (A Corporation),

vs. *Appellant,*

Henry F. Smith, et al.,

Appellees.

*Appeal from the District Court of the United States for the
Northern District of California.*

Transcript of Record.

ARMSTRONG & DE GUERRE, PRINT, 404 MONTGOMERY STREET, S. F.

FILED

SEP 18 1894

Records of the

Board of Appeals

33

UNITED STATES
 CIRCUIT COURT OF APPEALS
 FOR THE
 NINTH CIRCUIT.

OCCIDENTAL AND ORIENTAL STEAMSHIP COMPANY, a Corporation, <i>Appellant,</i> <i>vs.</i> HENRY F. SMITH ET AL, <i>Appellees.</i>	}
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UNITED STATES OF AMERICA, ss :

The President of the United States:

To Henry F. Smith, George C. Smith, infants, and Eliza A. Smith, their guardian, to Eliza A. Smith and to Eliza A. Smith as Administratrix of the Estate of Henry Smith, deceased, and to Clinton L. White and W. H. Cobb, their proctors,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 29th day of August next, pursuant to an order allowing an appeal, filed in the Clerk's Office of the District Court of the United States, for the Northern District of California, wherein the Occidental and Oriental Steamship Company is the appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said decree mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William W. Morrow, Judge of the United States District Court for the Northern District of California, this 31st day of July, A. D. 1894.

WM. W. MORROW,

U. S. District Judge.

Service of the within citation, by copy, admitted this 31st day of July, 1894.

CLINTON L. WHITE and WM. H. COBB,

Proctors for Appellees.

Endorsed: Filed July 31st, 1894.

SOUTHARD HOFFMAN, Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

HENRY F. SMITH AND GEORGE C.
SMITH, Infants, by Eliza A.
Smith, their Guardian, and Eli-
za A. Smith, for herself and as
Admini-tratrix of the estate of
Henry Smith, Deceased.

Plaintiffs,

vs.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY, a corporation,
AND PACIFIC COAST STEAMSHIP
COMPANY, a corporation,
Defendants.

Plaintiffs complain against defendants, and for cause of
action against them allege :

I.

That plaintiffs, Henry F. Smith and George C. Smith,
are infants, under the age of fourteen years, residents of
the county of Sacramento, State of California, and that on
the 15th day of August, 1890, in the Superior Court of
the county of Sacramento, State of California, upon due
proceedings had and notice given, the plaintiff, Eliza A.
Smith, was appointed guardian of said infant plaintiffs,
and duly qualified as such guardian, and letters of guard-
ianship of said infant plaintiffs, were duly issued to her by

said Superior Court, under the seal thereof, which letters have not been revoked, and ever since said time plaintiff, Eliza A. Smith, has been and now is, the duly appointed, qualified and acting guardian of said infant plaintiffs.

II.

That the infant plaintiffs herein are children, and the plaintiff, Eliza A. Smith, is the surviving wife of Henry Smith, deceased, hereinafter mentioned, the plaintiffs are the next of kin and only heirs at law of said Henry Smith, deceased.

That said Henry Smith was a resident of the County of Yolo, State of California, at the time of his death, and that he died intestate, and on or about the --- day of October, 1888, upon due proceedings had and notice given, plaintiff, Eliza A. Smith, was by an order of the Superior Court of the County of Yolo, State of California, duly appointed administratrix of the Estate of said Henry Smith, deceased, and said plaintiff thereupon duly qualified as such administratrix, and letters of Administration of the Estate of said Henry Smith, deceased, were thereupon duly issued to her by said Supreme Court, which letters have not been revoked, and ever since said time plaintiff, Eliza A. Smith, has been and now is the duly appointed, qualified and acting Administratrix of the Estate of Henry Smith, deceased.

III.

That the defendant, Occidental and Oriental Steamship Company, is a corporation, duly organized and incorporated for the purpose of, and was at all the times herein

mentioned and still is conducting business as a common carrier, engaged as such in running lines of steamship and carrying passengers thereon for hire between the port of San Francisco, in California, and other ports of the Pacific Ocean, and at all times herein mentioned was and still is the proprietor of a certain steamship named the "Oceanic," which is employed by said defendant in making voyages, carrying passengers, between San Francisco and Yokohama.

IV.

That defendant, Pacific Coast Steamship Company, is a corporation duly organized and incorporated for the purpose of and was at all times herein mentioned, and still is, conducting business as a common carrier, engaged as such in running lines of steamships and carrying passengers thereon for hire between the Port of San Francisco, in California, and other ports of the Pacific Ocean, and up to the time of the sinking and loss of said steamship, on August 22nd, 1888, as hereinafter set forth, was the proprietor of a certain steamship named the "City of Chester," which was employed by said defendant in making voyages, carrying passengers for hire on the Pacific Ocean, between San Francisco, California, and Eureka, California.

V.

That on the 22nd day of August, 1888, at San Francisco, California, the defendant, the Pacific Coast Steamship Company, received Henry Smith on board its said steamship "City of Chester," for the purpose of conveying him, said Henry Smith, as a passenger on said steamship from San Francisco to Eureka, California, for the price

charged by said defendant therefor and which the said Henry Smith paid to the said defendant in advance.

VI.

That defendants herein, on said 22nd day of August, 1888, so negligently, unskillfully and wrongfully conducted themselves and so misbehaved in the management of their respective steamships, the "Oceanic" and the "City of Chester," that, through the gross negligence, unskillfulness and wrongful acts of defendants, their respective agents, servants and employees, the said two steamships, the "City of Chester" and the "Oceanic" were caused to collide and strike together, at or near the entrance to the harbor of San Francisco, and within less than three miles from the shore, and thereby, and through the gross negligence, unskillfulness and wrongful acts of defendants, their respective agents, servants and employees, said steamship, the "City of Chester" was caused immediately to sink beneath the waters, and was wholly lost, and the said Henry Smith who was, as aforesaid, a passenger on board said steamship, was carried down with said steamship beneath the waters, and thereby, and without any fault or negligence on his part, but solely through the gross negligence, unskillfulness, and wrongful acts of defendants, their respective agents, servants and employees, was drowned and deprived of his life.

VII.

That said Henry Smith was, at the time of his death, of the age of about thirty-two years, was in perfect health, intelligent, well educated, industrious, of good habits, a kind and loving husband and father, providing well for

his family, of good business ability, and had every prospect before him of a long, useful and prosperous life, and plaintiffs herein were dependent upon and were actually supported by him, and they have, by his said death, suffered damages in the full sum of seventy-five thousand dollars.

VIII.

That plaintiffs have been further specially damaged in the sum of two hundred and seventy-five dollars, necessarily laid out and expended by them in bringing the body of said Henry Smith from San Francisco to Sacramento, the place of burial thereof, and for procuring a cemetery lot, and for the necessary funeral expenses of said Henry Smith.

Wherefore, plaintiffs pray judgment against defendants for seventy-five thousand two hundred and seventy-five dollars, and costs of suit.

CLINTON L. WHITE,

Attorney for Plaintiffs.

STATE OF CALIFORNIA, }
 County of Sacramento. }

Eliza A. Smith, being first duly sworn, says that she is one of the plaintiffs in the above entitled action. That she has heard the foregoing complaint read, and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information or belief, and as to those matters she believes it to be true.

ELIZA A. SMITH.

Subscribed and sworn to before me this 16th day of August, 1890.

[SEAL.]

CLINTON L. WHITE,
Notary Public.

[Endorsed.] Filed August 19th, 1890.

SOUTHARD HOFFMAN,
Clerk.

By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

HENRY F. SMITH AND GEORGE C.
SMITH, INFANTS, BY ELIZA A.
SMITH, their Guardian, and
ELIZA A. SMITH for Herself
and as Administratrix of the
Estate of Henry Smith, De-
ceased,

Plaintiff,

vs.

OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY, a Cor-
poration, and the PACIFIC COAST
STEAMSHIP COMPANY, a Cor-
poration,

Defendant.

No. 257.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

GREETING :

*To the Occidental and Oriental Steamship Company, a
Corporation, and Pacific Coast Steamship Company, a
Corporation, Defendants.*

You are hereby required to appear in an action brought against you by the above named plaintiff, in the District Court of the United States for the Northern District of California, and to file your plea, answer or demurrer to the complaint filed therein, in the office of the Clerk of said Court in the City and County of San Francisco within ten days (exclusive of Sundays and day of service) after

the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover seventy-five thousand two hundred and seventy five (\$75,275) dollars damages and costs of suit, as will more fully and at large appear from the duly certified copy of complaint accompanying this summons; and if you fail to appear and plead, answer or demur, as herein required, judgment by default will be entered against you.

Witness, the Honorable Ogden Hoffman, Judge of said Court, this 19th day of August, in the year of our Lord one thousand eight hundred and ninety and of our Independence the one hundred and fifteenth.

(Seal.)

SOUTHARD HOFFMAN, Clerk.

UNITED STATES MARSHAL'S OFFICE, }
Northern District of California. }

I hereby certify that I received the within writ on the 20th day of August, 1890, and personally served the same on the 21st day of August, 1890, on Pacific Coast Steamship Company by delivering to and leaving with Geo. C. Perkins, who is a member of the firm of Goodall, Perkins & Co., managing agents of said Pacific Coast Steamship Company, said defendant named therein personally, at the City and County of San Francisco in said District, a certified copy thereof, together with a certified copy of the complaint, certified to by Southard Hoffman, Clerk of said Court, attached thereto.

W. G. LONG, United States Marshal.

By P. H. MALONEY, Deputy

SAN FRANCISCO, August 21st, 1890.

I hereby certify that I received the within writ on the 20th day of August, 1890, and personally served the same on the 20th day of August, 1890, on the Occidental and Oriental Steamship Company by delivering to and leaving with D. D. Stubbs, Secretary of said Occidental and Oriental Steamship Company, said defendant named therein, personally, at the City and County of San Francisco in said District, a certified copy thereof, together with a certified copy of the complaint certified to by Southard Hoffman, Clerk of said Court, attached hereto.

W. G. LONG, United States Marshal.

By P. H. MALONEY, Deputy.

SAN FRANCISCO, August 20th, 1890.

Endorsed : Filed August 21st, 1890.

SOUTHARD HOFFMAN, Clerk.

*In the District Court of the United States, in and for
the Northern District of California.*

HENRY F. SMITH and GEORGE C. SMITH,
Infants, by ELIZA A. SMITH, their
Guardian, and ELIZA A. SMITH, for
herself and as Administratrix of the
Estate of HENRY SMITH, deceased.
Plaintiffs.

vs.

OCCIDENTAL & ORIENTAL STEAMSHIP
COMPANY, a Corporation, and PACIFIC
COAST STEAMSHIP COMPANY, a Cor-
poration,
Defendants.

Now comes the defendants, the Occidental and Oriental Steamship Company, and demurs to the complaint of the plaintiffs in the above entitled action, and for cause of demurrer alleges and shows to the Court as follows :

That there is a misjoinder of parties plaintiff in this.

1st. That the plaintiff or the personal representative to wit, the administratrix of the estate of Henry Smith, deceased, has brought this action under the provisions of section 577 of the Code of Civil Procedure of the State of California, and has in the same action united with her, as plaintiffs, the children of said deceased and herself individually, as the heirs and next of kin of said deceased, who have no right, title or interest in the subject matter of said action so brought by said administratrix, and no

standing in Court to maintain this action as co-plaintiffs with her.

2nd. That the plaintiffs, Henry F. Smith and George C. Smith, infants, by Eliza A. Smith, their guardian, and Eliza A. Smith (the children, widow, heirs at-law and next of kin of Henry Smith, deceased), have brought this action under the provision of section 377 of the Code of Civil Procedure of the State of California, and have in the same action united with them as plaintiff, Eliza A. Smith, administratrix of the estate of Henry Smith, deceased, as such administratrix. That said administratrix of said Henry Smith, deceased, has no right, title or interest in the subject matter of said action so brought by said heir-at-law and next of kin of said deceased, and no standing in Court to maintain this action as co-plaintiff with said heirs-at-law.

3rd. That the said complaint does not state facts sufficient to constitute a cause of action.

4th. That several causes of action have been improperly united in said complaint, to wit: A cause of action belonging to Eliza A. Smith, administratrix of the estate of Henry Smith, deceased, against the defendants and a cause of action belonging to the heirs-at-law and next of kin of Henry Smith, deceased, against said defendants.

5th. That said complaint is ambiguous, unintelligible and uncertain; in this, it is impossible to determine from said complaint whether said action is an action sought to be maintained by the heirs-at-law and next of kin of Henry Smith, deceased, against the defendants, or is an action sought to be maintained by Eliza A. Smith, admin-

istratrix of the estate of Henry Smith, deceased, against the same defendant. That all said parties cannot jointly maintain this action. That the plaintiffs in such an action must be either the heirs-at-law or the personal representative of the person, not being a minor, whose death is alleged to have been caused by the wrongful act or neglect of another, and that both cannot unite in an action for the same cause of action under the provisions of section 377 of the Code of Civil Procedure of the State of California.

Wherefore, defendant demands that the prayer of said complaint may be denied, and that it have and recover of plaintiffs its costs herein incurred.

W. H. L. BARNES,

Attorney for Defendant, Occidental and Oriental Steamship Co.

STATE OF CALIFORNIA, }
 City and County of San Francisco. } ss.

W. S. Hinkle, being duly sworn, deposes and says that he is managing clerk for W. H. L. Barnes the attorney of record for the Occidental and Oriental Steamship Company, one of the defendants in the above entitled action, and that the said W. H. L. Barnes resides and has his office at the City and County of San Francisco, State of California; that Clinton L. White is the attorney of record for the above named plaintiffs in said cause, and that he, said Clinton L. White has his office at Rooms 10 and 11, Sutter Building, Sacramento, Sacramento county, in said State; that in each of said two places there is a United States postoffice, and between said two places there is a regular daily communication by mail; that on the 27th day of

August, 1890, deponent served a true copy of the foregoing demurrer in said action on said Clinton L. White, the said attorney for said plaintiffs, by depositing such copy of demurrer of said date in the postoffice at said City and County of San Francisco, properly enclosed in an envelope, addressed to said Clinton L. White, attorney-at-law, at Rooms 10 and 11, Sutter Building, Sacramento, Sacramento county, where said attorney has his office, and pre-paying the postage thereon.

W. S. HINKLE.

Subscribed and sworn to before me, this 27th day of August, 1890.

(Seal.)

GEO. T. KNOX,
Notary Public.

Endorsed: Filed Aug. 27th, 1890.

SOUTHARD HOFFMAN,
Clerk.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Thursday, the 29th day of January, in the Year of our Lord One Thousand Eight Hundred and Ninety-One.

PRESENT:—

The Honorable WM. W. MORROW, Judge.

HENRY F. SMITH, ET AL.,

vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY.

No. 257.

In this cause the demurrer to the complaint herein having

been submitted to the Court for consideration and decision ; now after due consideration had thereon, it is by the Court ordered that the said demurrer be and the same is hereby overruled with leave to the defendants to answer within twenty days.

In the District Court of the United States, in and for the Northern District of California,

HENRY F. SMITH AND GEORGE C. SMITH, Infants, by ELIZA A. SMITH, their Guardian, and ELIZA A. SMITH for Herself and as Administratrix of the Estate of HENRY SMITH, Deceased,

Plaintiffs,

vs.

OCCIDENTAL AND ORIENTAL STEAMSHIP COMPANY, a Corporation, and the PACIFIC COAST STEAMSHIP COMPANY, a Corporation,

Defendants.

Now comes the Occidental and Oriental Steamship Company, one of the defendants in the above entitled action, and makes its separate answer to the complaint of the plaintiffs herein, and alleges and shows to the Court as follows :

I.

The defendant has no knowledge or belief sufficient to enable it to answer the allegations contained in Paragraph I of said complaint, and therefore and on that ground denies the said allegations and each and every of them.

II.

Defendant has no knowledge or belief sufficient to enable it to answer the allegations contained in Paragraph II of said complaint, and therefore and on that ground denies the said allegations and each and every of them.

III.

Defendant admits the allegations contained in Paragraph III of said complaint.

IV.

Defendant has no knowledge or belief sufficient to enable it to answer the allegations contained in Paragraph IV of said complaint, and therefore on that ground denies the said allegations and each and every of them.

VI.

The said defendant denies that on the 22d day of August, 1888, or at any other time, it negligently, unskillfully or wrongfully conducted itself separately or in conjunction with the steamship "City of Chester" or so or at all misbehaved itself in the management of said steamship "Oceanic," or either by itself, or in connection with the said "City of Chester," or at all, that through the gross or other negligence, unskillfulness or wrongful acts of the said defendant, either

by itself or in connection with said co-defendant, or its agents, servants or employees, the said two steamships, the "Oceanic" and the "City of Chester," were caused to collide and strike together at or near the entrance to the harbor of San Francisco, or elsewhere, or within less than three miles from shore, or any other distance, or thereby or through the gross or any negligence, unskillfulness, or wrongful or other acts of this defendant, its agents, servants or employees, either separately or in connection with its co-defendant, or its respective agents, servants, employees, the said "City of Chester" was caused immediately or at all, or ever, to sink beneath the waters, or was lost, or the said Henry Smith was carried down with said steamship beneath the waters, or thereby, or without any fault or negligence on his part, or solely, or at all, through the gross or any negligence, unskillfulness or wrongful or other acts of said defendant, its agents, servants or employees, either separately or in connection with its co-defendant, or its agents, or servants, or employees, said Henry E. Smith was drowned or deprived of his life.

And this defendant further answering the allegations contained in Paragraph VI of said complaint alleges, that on the day and year on that behalf alleged in the complaint, it was in possession of and operating upon a steamship route between San Francisco and Yokohama, the steamship "Oceanic." That said steamship was in all respects well found, equipped and manned, and in every respect fit and suitable for the voyage upon which she was then engaged. That on said day the steamship "Oceanic" was approaching the port of San Francisco under charge of a competent pilot, and proceeded with all proper care

and circumspection to enter the harbor or port of San Francisco. That at the time of her so entering said port or harbor there was a light and variable fog on the Bay of San Francisco, sometimes lifting so that the sight was comparatively unobscured, and at other times closing thickly down upon said steamship. That said steamship was slowed down to what is known as "dead slow," and lookouts were posted, and the ship steered in the track usually taken by inbound steamships. That while so carefully proceeding, and in the exercise of the utmost care and diligence, those on board of the "Oceanic" and in charge of her heard a steam whistle, which was instantly replied to by that on said steamship "Oceanic;" that thereafter, and while the engines of the said steamship "Oceanic" were put at "dead slow" and the steam whistle kept going at intervals of one minute, and at about 9:25 A. M., a vessel was observed off the starboard bow of the "Oceanic." That the pilot in charge of said "Oceanic" then ordered two blasts of the whistle, which is understood to mean, "I am starboarding," and the helm of the "Oceanic" was immediately put hard to starboard, and the said steamship "Oceanic" answered the helm at once. The vessel so signaled replied with two blast upon her whistle, which was understood to mean that the signal so given by the pilot of the "Oceanic" was understood, and the same signal was thereupon repeated. But for some reason the said "City of Chester" was not steered in accordance with said understanding, or failed to mind her helm. Thereupon the engines of the said steamship "Oceanic" were stopped and reversed to full speed astern, and thereafter the said steamships col-

lided, the stem of the "Oceanic" penetrating the port side of the "City of Chester" about forty feet from the bow. That every effort was made by the officers and crew of the said steamship "Oceanic" to save life, and ropes and buoys were thrown over and the boats of the "Oceanic" were promptly manned and lowered.

And defendant further alleges that said disaster occurred without any fault of any description on the part of those in charge of and controlling said steamship "Oceanic," and that after the occurrence of said disaster every effort which was possible under the circumstances was made to save the life of the said Henry Smith, as well as of those of all other persons on board of said vessel.

VII.

Defendant has no knowledge or belief sufficient to enable it to answer the allegations contained in Paragraph VII of said complaint, and therefore and on that ground denies the said allegations and each and every of them. And the defendant denies that by reason of any act or omission of the defendant, the Occidental and Oriental Steamship Company, the plaintiffs suffered damages in the full sum of seventy-five thousand (\$75,000) dollars or any other sum whatever.

VIII.

Defendant has no knowledge or belief sufficient to enable it to answer the allegations contained in Paragraph VIII of said complaint, and therefore and on that ground denies the said allegations and each and every of them.

And the defendant denies that by reason of any act or

omission of the defendant, the Occidental and Oriental Steamship Company, the plaintiffs have been specially damaged in the sum of two hundred and seventy-five (\$275) dollars or any other sum whatever.

Wherefore the defendant, the Occidental and Oriental Steamship Company, one of the defendants as aforesaid, demands judgment in its favor against said plaintiffs and each of them, and for its costs and disbursements made in defending this action.

W. H. L. BARNES,
Attorney for O. & O. S. S. Co.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

D. D. Stubbs, being duly sworn, deposes and says that he is an officer of the above named defendant corporation, to wit: The Secretary thereof; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

D. D. STUBBS.

Subscribed and sworn to before me, this 13th day of February, 1891.

[Seal.]

E. B. RYAN,
Notary Public.

Endorsed: Filed February 18th, 1891.

SOUTHARD HOFFMAN,
Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

HENRY F. SMITH and GEORGE C.
SMITH, Infants, by ELIZA A.
SMITH, their Guardian, and
ELIZA A. SMITH for herself
and as Administratrix of the
Estate of HENRY SMITH, de-
ceased,

Plaintiff,

vs.

OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY, a Cor-
poration, and PACIFIC COAST
STEAMSHIP COMPANY, a Cor-
poration,

Defendants,

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

John W. Cathcart, of said City and County, being duly sworn, says he is a male citizen of the United States, over eighteen years of age, and not a party to the above entitled action.

That on the 16th day of February, 1891, he deposited in the United States Postoffice, at the city of San Francisco, aforesaid, a true copy of the answer of the defendant, the Occidental and Oriental Steamship Company, in the above entitled action, directed to Clinton L. White, the attorney of record of the above named plaintiff, at the city

of Sacramento, State of California, Rooms Nos. 10 to 11, Sutter Building, the same being the place of his residence and office. And that there is a regular communication by the United States Mails from said Postoffice of deposit thereof, as aforesaid, to said Clinton L. White's said place of residence and office.

JOHN W. CATHCART.

Subscribed and sworn to before me, this 18th day of February, 1891.

[Seal.]

JOHN COFFEE,
Notary Public.

Endorsed: Filed February 18th, 1891.

SOUTHARD HOFFMAN,
Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

HON. W. W. MORROW,
Judge.

HENRY F. SMITH, ET AL,
Plaintiffs,

vs. -

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY,
Defendants.

No. 257.

ELIZA A. SMITH,
Plaintiff,

vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY.
Defendants.

No. 258.

MONDAY, Sept. 4th, 1893.

In these causes it is stipulated and agreed between counsel for the respective parties Plaintiffs and Defendants, in open Court, that these actions, and each of them, are and is a proceeding in admiralty in personam, all objections or exceptions to form of summons, or citation, or objections to pleadings, as not being in accordance with the admiralty rules and practice of this Court, are and is hereby waived, and that the cause may be tried and determined

in the same manner, and with the same effect as if citation had been issued in each case, instead of summons, and the proceedings were in all respects conformable to the rules of this Court in admiralty.

Mr. White of counsel for plaintiff in each case now, in open Court, demands that the same be tried by Jury.

Messrs. Barnes and Shay, representing the Defendants, object upon the ground that these being causes in admiralty and not at common law, the Plaintiff's have no right, and the Court has no power to award a trial by Jury.

The Court sustained the objection, stating that the Court had no authority in an admiralty case, to award a trial of a case by a Jury, and ordered that the trial of the causes proceed before the Court on Thursday next, September 7th, without a Jury.

Mr. White takes an exception to the ruling of the Court.

It is hereby stipulated in open Court that the above causes shall be tried at the same time, and upon the same evidence, so far as the same is applicable, and that each party have the benefit in each case, of all objections and exceptions taken upon the trial, and that the Court may award separate judgments in the cases.

[Endorsed]: Filed September 7th, 1893.

SOUTHARD HOFFMAN, Clerk.

By J. S. Manley, Deputy Clerk.

At a stated meeting of the District Court of the United State of America, for the Northern District of California, held at the Court-room, in the city of San Francisco, on

Thursday, the 7th day of November, in the year of our Lord, one thousand eight hundred and ninety-three.

Present:

The Honorable WM. W. MORROW, Judge.

HENRY F. SMITH ET AL.,	} No. 10,732.
VS.	
THE OCCIDENTAL & ORIENTAL STEAMSHIP Co.	

and

ELIZA A. SMITH,	} No. 10,733.
VS.	
THE OCCIDENTAL & ORIENTAL S S. Co.	

These causes as consolidated for the purpose of trial, this day came on for hearing, C. L. White, Esq. and W. H. Cobb, Esq., appearing as proctors for libellants, and W. H. L. Barnes, Esq., and Frank Shay, Esq., as proctors for respondent; and on motion of Mr. White, it is ordered that the libellants be, and they are hereby permitted to amend their libel in case No. 10,732, by striking out paragraph 8 thereof. Mr. White then stated the case of the libellant to the Court and Mr. Barnes stated the case for respondent. Mr. White called Louis Mayer and John Metcalfe, who were duly sworn and examined as witnesses on behalf of the libellants, and pending the examination of Mr. Metcalfe, the further hearing hereof was continued until Friday, September 8, 1893.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Court-room, in the city of San Francisco, on

Tuesday, the 12th day of September, in the year of our Lord, one thousand eight hundred and ninety-three.

Present:

The Honorable WM. W. MORROW, Judge.

HENRY F. SMITH, ET AL.,	} No. 10,732.
vs.	
OCCIDENTAL & ORIENTAL S. S. Co.	

and

ELIZA A. SMITH,	} No. 10,733.
vs.	
OCCIDENTAL & ORIENTAL S. S. Co.	

These causes as consolidated for the purposes of trial, this day came on regularly for further hearing, C. L. White, Esq., and W. H. Cobb, Esq., appearing as proctors for the libellants, and W. H. L. Barnes, Esq., and Frank Shay, Esq., as proctors for the respondent. The examination of John Metcalfe, a witness on behalf of the libellants, was resumed and concluded. And Mr. White called David Franklin Cookson, Charles McCallom, Thomas Wallace, Rufus Comstock, John Lundine, James J. Loggie, James Rankin and Ferdinand Westdahl, who were duly sworn and examined as witnesses on behalf of the libelants; and thereupon, the further hearing hereof was continued until Wednesday, September 13, 1893.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Court room in the City of San Francisco,

on Wednesday, the 13th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present :

The Honorable WM. W. MORROW, Judge.

HENRY F. SMITH, ET AL.,	}	No. 10,732.
vs.		
OCCIDENTAL & ORIENTAL S. S. Co.		

and

ELIZA A. SMITH,	}	No. 20,733.
vs.		
OCCIDENTAL & ORIENTAL S. S. Co.		

These causes, as consolidated for the purposes of trial, this day came on regularly for further hearing, C. L. White, Esq., and W. H. Cobb, Esq., appearing as proctors for the libellants, and W. H. L. Barnes, Esq., and Frank Shay, Esq., as proctors for the respondent. Mr. White recalled Thomas Wallace, who was further examined as a witness on behalf of the libellants, and called Mrs. Eliza A. Smith, E. S. Talbot, Clitus Barbour, Mrs. Sarah Nye and S. M. Marks, who were duly sworn and examined as witnesses on behalf of the libelants and rested. Mr. Barnes called George T. Tilston, Thos. P. H. Whitelaw, George E. Bridget, William Allen, Thomas Mirk, A. B. Brolly, James Swan, Henry A. M. McLaughlin and John McDonald, who were examined as witnesses on behalf of the respondent, and rested. And thereupon the further hearing hereof was continued until Thursday, September 14th, 1893.

At a stated term of the District Court of the United States of America, for the Northern District of Califor-

nia, held at the Court room in the City of San Francisco, on Thursday, the 14th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present :

The Honorable Wm. W. Morrow.

HENRY F. SMITH, ET AL.,	}	No. 10,732.
vs.		
OCCIDENTAL & ORIENTAL S. S. Co.		

and

ELIZA A. SMITH,	}	No. 10,733.
vs.		
OCCIDENTAL & ORIENTAL S. S. Co.		

These causes, as consolidated for the purposes of trial, this day came on regularly for further hearing, C. L. White, Esq., and W. H. Cobb, Esq., appearing as proctors for libellants, and W. H. L. Barnes, Esq., and Frank Shay, Esq., as proctors for the respondent. The testimony being announced closed, the causes were argued by Mr. White for the libellants and Mr. Barnes on behalf of the respondent and submitted to the Court for consideration and decision.

*In the District Court of the United States, in and for the
Northern District of California.*

Hon. W. W. MORROW, Judge.

HENRY F. SMITH, ET AL,
Plaintiffs,
vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY,
Defendants.

No. 257.

ELIZA A. SMITH,
Plaintiff,
vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY,
Defendants.

No. 258.

MONDAY, Sept. 4th, 1893.

In these causes it is stipulated and agreed between counsel for the respective parties Plaintiffs and Defendants, in open Court, that these actions, and each of them, are and is a proceeding in admiralty in personam, all objections or exceptions to form of summons, or citation, or objections or exceptions to form of summons, or citation, or objections to pleadings, as not being in accordance with the admiralty rules and practice of this Court, are and is hereby waived, and that the causes may be tried and determined in the same manner, and with the same effect as if citation had

been issued in each case, instead of summons, and the proceedings were in all respects conformable to the rules of this Court in admiralty.

Mr. White, of counsel for Plaintiff in each case now, in open Court, demands that the same be tried by Jury.

Messrs. Barnes and Shay, representing the Defendants, object upon the ground that these being causes in admiralty, and not at common law, the Plaintiffs have no right, and the Court has no power to award a trial by Jury.

The Court sustained the objection, stating that the Court had no authority in admiralty case, to award a trial of a case by a Jury, and ordered that the trial of the causes proceed before the Court on Thursday next, September 7th, without a Jury.

Mr. White takes exception to the ruling of the Court.

It is hereby stipulated in open Court that the above causes shall be tried at the same time, and upon the same evidence, so far as the same is applicable, and that each party have the benefit in each case, and all objections and exceptions taken upon the trial, and that the Court may award separate judgments in the cases.

*In the District Court of the United States in and for the
Northern District of California.*

HON. W. W. MORROW, Judge.

HENRY F. SMITH, ET AL.,

Plaintiffs.

vs.

THE OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY,

Defendants.

No. 257.

ELIZA A. SMITH,

Plaintiff.

vs.

THE OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY,

Defendant.

No. 258.

THURSDAY, September 7th, 1893.

APPEARANCES.

Clinton L. White and William H. Cobb, Esqs, ap-
peared for the plaintiffs.

W. H. L. Barnes, Esq., and Frank Shay, Esq., ap-
peared for the defendants.

This cause now came on in its regular order on the
calendar before the Court, and the following proceedings
were had:

THURSDAY, September 7th, 1893.

The Court—This case of H. F. Smith has been consolidated with that of Eliza A. Smith.

Mr. Barnes— It is agreed that both cases may be tried together.

The Court—I think it will be proper that you gentlemen have a copy of the stipulation, which was entered into on last Monday or Tuesday, filed with the Clerk of the Court because there is a transfer of that case from the common law side of the Court to that of the admiralty side of the Court.

Mr. Barnes—The reporter, Mr. Bennett, has that stipulation in his notes, and we will get a transcript of it and file it in accordance with your Honor's suggestion.

The Court—Proceed, Mr. White.

Mr. White—May it please the Court, before commencing the trial of these cases, I desire in the case No. 257, to ask leave of the Court to strike from the complaint, paragraph 8, which is as follows (reads said paragraph); not that it contains matter that we cannot prove, and I find that a demurrer as to misjoinder has been overruled, but upon examination of the authorities I feel some uncertainty about this, and I prefer, rather than have anything of this kind in the case, to abandon entirely the claim for this \$275, and I ask therefore that this order be entered: "On motion of plaintiffs it is ordered that the plaintiffs be, and they are hereby, permitted to amend their complaint herein by striking out paragraph 8 thereof."

The Court—Let that order be entered.

Mr. Barnes—Before you open the case, I will make some admissions of fact that will save time both to the

counsel and to the Court, and I will ask the reporter to note that the claimants or defendant herein admits certain facts in this case.

The Occidental and Oriental Steamship Company, the corporation defendant in the case of Henry F. Smith and George C. Smith, infants, by Eliza A. Smith, their guardian, and Eliza A. Smith for herself as administratrix of the estate of Henry Smith, deceased, plaintiffs, vs. The Occidental and Oriental Steamship Company, a corporation, and the Pacific Coast Steamship Company, a corporation, defendant, admit the following facts:

First—That the plaintiffs, Henry F. Smith and George C. Smith are infants, and were at the time of the commencement of this action under the age of 14 years, residents of the County of Sacramento, State of California; and that on the 15th day of August, 1890, in the Superior Court of the County of Sacramento, State of California, upon due proceedings had and notice given, the plaintiff, Eliza A. Smith, was appointed guardian of the said infant plaintiffs, and duly qualified as such guardian, and letters of guardianship on said infant plaintiffs were duly issued to her by said Superior Court, under the seal thereof, which letters have not been revoked, and ever since the said plaintiff, Eliza A. Smith, has been and now is duly appointed, qualified and acting guardian of said infant plaintiffs.

Second—That the infant plaintiffs herein are the children of the plaintiff Eliza A. Smith, as the surviving wife of Henry Smith, deceased, herein mentioned, and the said plaintiffs are the next of kin and the only heirs at law of said Henry Smith, deceased; that said Henry Smith was

a resident of the County of Yolo, State of California, at the time of his death, and that he died intestate, and that in the month of October, 1888, upon due proceedings had and notice given, the plaintiff Eliza A. Smith was, by order of the Superior Court of the County of Yolo, State of California, duly appointed administratrix of the estate of said Henry Smith, deceased; and that the plaintiff thereupon duly qualified as such administratrix, and letters of administration of the estate of said Henry Smith, deceased, were duly issued to her by the Superior Court, which letters have not been revoked; and that since that time the plaintiff Eliza A. Smith has been and now is the duly appointed, qualified and acting administratrix of the estate of Henry Smith, deceased.

Third—That the defendant, the Occidental and Oriental Steamship Company, is a corporation duly organized and incorporated for the purposes stated in the complaint; that at the time of the disaster which forms the basis of this proceeding, the company named was in possession of and had control of and operated the said ship "Oceanic," and that said steamship was employed by the corporation at the time alleged in the complaint, to-wit, on the 22d day of August, 1888, and was engaged in the transportation of passengers for hire between the port of San Francisco, State of California, United States of America, and Yokohama, Japan, and Hong Kong, China. I may say here that the defendant is not the owner of the steamship. It is the lessee of the steamship, and hires and charters the steamship from the owners of it, the White Star Company, but it is connected for the purpose of this action, or

for any relief that the plaintiffs may be entitled to, that we are responsible and *de facto* the owners of the ship.

It is admitted that the Pacific Coast Steamship Company was, at the time of this disaster, a corporation duly organized and incorporated for the purpose of carrying on the business of a common carrier of passengers by sea, for hire, and was on that day the owner of the steamship "City of Chester," and that steamship was employed under the laws of the United States in the coastwise trade, running principally between the port of San Francisco and the port of Eureka. We also admit that on the 22nd day of August, 1888, Henry Smith, the deceased husband of Mrs Eliza Smith and the father of these infant plaintiffs, was a passenger on board said "City of Chester," for hire, to be carried from the port of San Francisco to the port of Eureka, and that he paid his fare and was entitled to all the privileges, immunities and relief of a passenger in a case of this character.

Now, in the second case, No 258, in the suit of Eliza A. Smith against the Occidental & Oriental Steamship Company, a corporation, and the Pacific Coast Steamship Company, a corporation, the defendant concedes the following facts: That the defendant, the Occidental and Oriental Steamship Company is a corporation, and was on the 22d day of August, 1888, engaged in the business of a common carrier of passengers between the port of San Francisco, California, United States of America, and the ports of Yokohama, Japan, and Hong Kong, China, and then was, and now is, responsible for any wrong, tort or misfeasance of its captain, pilot or other officers. We admit that the defendant, the Pacific Coast Steamship Company, was also

a corporation engaged in carrying passengers for hire in the the coastwise trade, under the laws of the United States, and was carrying passengers for hire at the time of this disaster on the Pacific Ocean, between the ports of San Francisco and Eureka; that on the 21d day of August, 1888, at San Francisco, the Pacific Coast Steamship Company received Myrta E. Smith on board of its steamship, the "City of Chester," for the purpose of conveying said Myrta Smith from San Francisco to Eureka, and that the fare of said Myrta E. Smith had been full paid to to that Company in advance. We admit that Myrta E. Smith, on the 22d day of August, 1888, was about the age of 15 years, and that both Henry E. Smith and Myrta E. Smith were among those who lost their lives, as the result of the collision between the steamship "City of Chester" and the steamship "Oceanic."

Mr. White—It seems hardly necessary, may it please the Court, for me to make any opening statement to your Honor in this case. It is two actions for damages against the Occidental and Oriental Steamship Company, and also against the other Company, the Pacific Coast Steamship Company, they causing the death by negligence, of Henry Smith, the husband of the plaintiff, Eliza A. Smith, and the father of the other two infant plaintiffs, and damages for the death of Myrta Smith, the daughter of the plaintiff, Eliza A. Smith. Some proceedings have been taken by the defendant, the Pacific Coast Steamship Company, under the Limited Liability Act, by which, I take it, that that defendant is practically no longer a party to this suit. I don't know exactly what order, if any, has been entered, or that any order has been entered, but as I understand

the law to be, they have given up their ship sunk in 50 fathoms of water, they were entitled to go free whether negligent or not.

Our contention will be here, and we expect to prove that the defendant—that the management of the steamship “Oceanic” was negligent. Whether or not the management of the “City of Chester” was negligent, is not a question that we care to decide. It is, perhaps, matter for the other side to be interested in. Of course after having proven or attempted to prove negligence in the management of the “Oceanic,” we will furnish to your Honor some proof of the value of the lives of these two parties, as far as that matter is capable of being estimated.

Mr. Barnes—I propose now to open the case for the defendant. The opening of counsel for plaintiffs has, of course, furnished your Honor with no indication whatever, nor to the defendant any indication as to what they expect to show against the steamship “Oceanic.” I suppose that counsel has taken that course for reasons which are satisfactory to himself. They are not, however, satisfactory to us, nor do I think they are satisfactory to your Honor, sitting as an admiralty Judge, because it seems to us that at the out set of the case, your Honor should understand something of the nature of this action, more than that it is a simple case to recover damages, and I take this occasion, with the permission of the Court, to open the case of the defendant, the Occidental and Oriental Steamship Company. Upon the right your Honor will see delineated upon the board a sketch showing the entrance of the harbor of San Francisco. This diagram is intended to show the entrance to the harbor of San Francisco. The top of the map is

North, the right is East, the left is West and seaward, and the bottom of the map is South. Upon it your Honor will see indicated the principal points on the Marin County side of the bay; where the pointer rests, is marked Bonita Point, and it is an important point in connection with the controversy here. Also Point Diablo, still further to the East on the Marin County side, and Lime Point. Upon the San Francisco side of the bay, the diagram commences by showing the position of the Cliff House, then passing around the point we come up to a buoy off Fort Point, and Fort Point itself; then passing along as far as Black Point. The evidence will show to your Honor, that on the morning of the 2nd day of August, 1888, the steamship "Oceanic" was entering the port of San Francisco, coming from China and Japan with a crew of engineers and sailors, and about 1100 passengers. She was a propeller, four-masted, and the diagram to the right of the platform is a photograph of the steamship "Oceanic," which gives the Court a good idea of the general appearance of the ship, and it will be used in showing to the Court the positions of the officers and men on the morning as the ship was coming into port. She picked up her pilot somewhere in the neighborhood of what is known as "Whistling Buoy," a little after 8 o'clock or thereabouts; the morning was foggy; the fog lifted and settled again, so that at the time the view over the water was unobscured for a space of two miles or more, sometimes closing down so that one could see from the deck of the ship about a half mile. The view was never more open than for two miles, nor closed to a greater degree than half a mile; after the "Oceanic" had taken on board the pilot, he proceeded to take command

of the ship and gave his orders. She came in from the "whistling buoy," and as she was coming in she passed a four-masted British ship at anchor with a tug fastened to her, and the ship was then heaving her anchor, and the tug was getting ready to bring her into port. The ship and the tug was hailed and inquiries were made as to the state of the weather so far as the fog was concerned inside the bay.

The Court—This meeting took place outside?

Mr. Barnes—Yes, sir; at what place we will show your Honor on the map, at the 10-fathom buoy, and I will add that this tug boat that had gone out that morning took this four-masted ship in tow and followed in the wake of the "Oceanic" into the scene of the disaster, arriving there shortly after it occurred. Now, the steamer came in, as we contend, in strict compliance with the regulations established by the laws of the United States, and to which I will call your Honor's attention hereafter, proceeding with the utmost caution, and that becomes important in the case. This diagram to which I now call your Honor's attention, is an enlarged navigator's map of the port of San Francisco, enlarged by a photographic process. It shows, as your Honor is aware, with reference to this map, all the points, headlands, the soundings and depth of water of which use is made for the purpose of navigation. The black line indicates the course of the "Oceanic" on coming into the harbor. The buoy to which I called your Honor's attention or spoke of just now is marked in red ink "B." The four-masted British ship that was at anchor and of which I have spoken here was at this point (indicating).

Mr. White (interrupting)—What is that point marked on the map, please ?

Mr. Barnes—"B." Now then, I say they hailed the tug and inquired concerning the weather inside, and the assurances were such that the "Oceanic" proceeded on her way. The British ship that was lying at anchor at this point had heaved her anchor, and the tug took her in tow and followed in after the "Oceanic," arriving shortly after the disaster upon its scene. From that point indicated by the letter "B" the steamship "Oceanic" was never at any time above half speed. She stopped repeatedly and started again, and when she reached a point opposite Point Bonita where the weather was so open that the point was plainly visible she went dead slow and proceeded only sufficiently fast to give her steerage way. The tide was flooding, going fast into the harbor, and with the tide she made just sufficient revolutions, as the engineers will explain to your Honor, to give her power to be properly steered and nothing more. She came up, as we contend, in accordance with the custom of the port or among pilots at all times, and particularly in heavy, thick weather, to the north of the channel, leaving the rest of the channel open for the passage of other vessels. As she came in thus slowly, sometimes at half speed, sometimes at dead slow, at all times under perfect command; her master and pilot were stationed at the bridge, which your Honor sees at the point where the pointer rests (indicating.) The bridge is an inclosed open space, which passes from side to side of the ship, representing a large, open platform. There is an opening or hatchway in which communication is had with

the steam gearing, which is operated by steam and is directly underneath this platform, so that the master and pilot, standing upon the bridge, can give their command to the men at the wheel—running the steam gearing with perfect ease and rapidity. The methods adopted for the purpose of communicating with the engine-room were of the most approved kind, and consisted of what is known as the telegraph. There were two of these telegraphs on the bridge of the “Oceanic,” one on the port side and the other on the starboard side, so that without delay or without waiting—from either side of the bridge—communication could be had with the engine-room. This method of communication will be practically shown to your Honor, and it is one of the modern triumphs of naval engineering. Two of these dials, precisely like the ones exhibited here (indicating), were on the bridge of the “Oceanic,” one on the port side and one on the other side, at all times under the control and command of the master or pilot. Upon the face of this dial your Honor will notice, first, in the center of the circle to the left is the word “astern,” to the right the word “ahead.” In the upper circle, rather at the top of the dial, the word “stop,” then “slow,” then “half speed,” then “full speed astern.” That is what that means on this side. On the other side is “going ahead”—as “going ahead slow,” “go ahead half speed” and “full speed.” We will show you that this apparatus is connected with the engine-room by means of this lever (indicating), and whenever this moved (indicating), the people in the engine-room were apprised simultaneously of the movement made upon the dial there. One of the engineers is stationed at this

telegraph in the engine-room, and when the signal is given by the captain or the pilot, who is steering on deck, it is instantly registered in the engine-room and recorded, and every time the ship makes a difference in the revolution of its engine or its propeller, that is to say, going ahead slow, then going ahead at half speed, going ahead at full speed, or to go back slow astern, half astern, full astern—whenever, I say, such change is made, it is registered immediately by this machine and communicated to the people in the engine room. Such was the apparatus on board the “Oceanic” for the purpose of handling her. Every officer of that ship was at his post and on deck. The first officer was forward in this position here (showing), and it is a curious circumstance that this photograph happened to be taken before this disaster ever occurred, from Meiggs’ wharf, by a snap-shot photograph, and with the same outfit that she had when the disaster occurred. In this case she is leaving port with the same men at their stations, and it is available for showing the way she came into port, because it was all just as it was, same men, same positions when she was leaving it. On the whaleback, as it is called, at the bow—so denominated, I believe, because it has an archy form and shape, for the purpose of shedding water; on the whaleback was the first mate and members of the crew on the lookout; here (indicating) was stationed another of the officers for the purpose of passing signals or words from the bridge to the officer on the whaleback, and again upon the bridge was stationed the captain of the ship, whom your Honor may possibly see indicated by that black dot there (indicating), and the pilot in a position nearer to the mast, indicated by the other figure, and

to the rear of him and of the mast was the second officer of the ship, holding in his hand a method of communication with the steam whistle, which is, as your Honor will see, just in front of the funnel and raised at a considerable height above the deck. Other officers, as your Honor will learn, were stationed at different portions of the ship from here to the stern. We shall show your Honor what the law of Congress required of a ship in the condition in which this was. I have marked on the outside of this monograph, Form No. 2,100 of the Government Printing Office at Washington, with which your Honor, doubtless, is entirely familiar, but for your convenience I have indicated upon the outside of the book which I will hand to your Honor for examination the different sections of the Act of Congress providing rules for sailing and steering vessels, and I will call your Honor's attention to Title 48, regulating commerce and navigation, Chapter 5, Navigation, Section 4233. The following rules for preventing collisions on the water shall be followed in the navigation of vessels of the Navy belonging to and of the mercantile marine of the United States: "Every steam vessel which is under sail and not under steam, shall be considered a sail vessel, and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel.

After providing for the lights at night, Rule 15 takes up the subject of fog signals, which is the subject which specially interests us in this inquiry.

"Rule 15. Whenever there is a fog, or thick weather by day or night, fog signals shall be used as follows: Steam vessels under way shall sound the steam whistle

placed before the funnel not less than 8 feet from the deck, at intervals of not more than one minute.”

We shall show your Honor that in compliance with the Revised Statutes, this ship was provided with the best quality and size of steam whistle, lifted above deck at a much greater height than the law required, and that connected with the whistle was a cord that went over the bridge, and that from the time the pilot got on board, before 8 o'clock, when this ship was well outside, Mr. Bridgert, the second officer of the “Oceanic,” stood on the bridge with the line in his hand, and at intervals of less than one minute from that time, up to the time of the collision, sounded a protracted whistle, known as the fog signal.

Now I shall call your Honor's attention further to Rules 19, 20 and 21, to be found on page 36 of Form 2100 of the United States Government Printing Office at Washington, and I will read Rule 18, which reads: “If two vessels under steam are meeting end on, or nearly so, so as to involve risk of collision, the helm of both shall be put to port, so that each may pass on the port side of the other.” Rule 19: “If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her starboard side, shall keep out of the way of the other.” Rule 20. “If two vessels, one of which, a sail vessel, and the other a steam vessel, shall proceed in such direction as to involve risk of collision, the steam vessel shall be kept out of the way of the sailing vessel.” Rule 21. “Every steam vessel when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or if necessary, stop and reverse, and every steam vessel shall, when in a fog, go at

a moderate speed." In accordance with these rules, as I have stated, the "Oceanic" came in at dead slow from the time she got near Bonita Point, passing on at dead slow, sounding her fog whistle, and everybody on deck attending to duty. As she approached Lime Point she heard the whistle of the "Chester." She then gave the signals required by the regulations of the port, and which I may say are the same established among all nations for signals at sea, by international concurrence, as your Honor is well aware; that is to say, two ships signal which way they are going. A single signal, short and sharp, which is different from the protracted signal of fog or blowing the fog signal, a short, sharp whistle, indicates and conveys an idea. One whistle means, "Put your helm to port," and two, "Put your helm to starboard," or, "I am putting my helm to starboard, you do the same." Of course it is apparent what is going to happen when such a thing as that is done. I have here two specimens of naval architecture that would drive Irving Scott crazy, but I suppose they will answer purpose of this case, and I will say that these are about in the proportion of the two ships. The "Chester" was a steamer with a tonnage of something over 1100, and the "Oceanic" was between three and four thousand tons; the details of that we will give to your Honor. Now, these ships coming upon each other, the "Oceanic" gives the first signal—two short, sharp blasts upon the whistle, which mean, "I am starboarding my helm, you do the same;" thereupon the helm is put to starboard, and the ship goes away to the left. Of course, your Honor, it is foolish for me to talk about these things in this way, because you are a good deal better sailor than I ever thought

of being, as I know from experience, but I shall proceed as lawyers always do who think a Judge don't know anything, and tell the effect of the two whistles. Starboarding the helm throws the rudder to port, and she pays off to the left. The same proceeding is taken on the part of the other ship. He starboards his helm and that sends the rudder to port and she pays off in this direction (showing). Now, the "Oceanic" was, as we shall claim she was, coming in with full careful compliance with all the laws of navigation upon this subject. She was going dead slow. She was sounding her fog whistle. She was amply manned. Fitted with every appliance for safe navigation, in accordance with law. When she heard the whistle of this vessel, the "Chester," the fog whistle, she signaled "I am going to the left; you go to the left." The "City of Chester" answered, as we say, "All right; I am going to the left; I have put my helm to starboard, and we are both passing on the starboard side of each other, and everything is all right." In a moment or two they were in sight of each other about a half a mile away. The "Oceanic" was in the neighborhood of Lime Point, and coming in, as your Honor will see on this map (indicating). I have marked here the space "A" where the "Chester" was first heard.

The Court—That is where the "Oceanic" was when she first heard the "Chester"?

Mr. Barnes—Yes; of course, we don't know except by results where the "Chester" was, but we do know—as I will show to your Honor, that those who have stated her position differently from what we understand it to have been, are simply daft. As she came up, going, as I say, dead slow, giving this signal, it was answered from the

“Chester” by the same two short, sharp whistles, and in a moment she was in sight and about a half a mile away; between a half and a quarter of a mile away. The “Chester didn’t seem to be going in the direction that her whistle said she was, and fearing that there might be some misunderstanding, the captain and pilot of the “Oceanic” repeated the signal—two sharp blasts, “We are hugging the shore going north as close as we can; you starboard your helm. You go to the left and we are all right.” When they got to a point placed nearly opposite—I might say, in general terms, opposite Lime Point—the “Chester” was observed by these mariners not to be minding her helm at all, but to be acting as though she, instead of starboarding her helm, she had ported it, and the result was this, the “Chester,” instead of as she came out of this space passing along this way, instead of starboarding her helm and going this way, she acted as though she had sent her helm in a directly opposite direction; at all events, she swung around as a sleigh will swing and slide, and didn’t mind her helm at all, if her helm was to starboard. The moment the captain and the pilot saw that she wasn’t doing this, they rang for stop and went full astern. The engines on the “Oceanic” answered with instant promptitude, and in less than two minutes she was going full speed astern; she had overcome her momentum, and the water from the propeller had reached a point forward of the bridge which this represents (indicating). The “City of Chester,” however, slid right along here, and did slide right down on board the “Oceanic,” striking just at about the point where I indicate by these points (showing). There was a scene of utter disorder and of

fright aboard the "Chester," and of discipline, manhood and courage on the "Oceanic." The crew of the "City of Chester," as many of them as could abandon the ship, abandoned the ship and went in over the bows of the "Oceanic" to save themselves. The boats of the "Oceanic," which I will show your Honor, were in perfect condition for handling. They were arranged with these patent falls, so that when the boat comes near the water, the tackle is let go, instead of being held by the bow and by the stern, so that sometimes the hook lets go on one end and don't let go at the other, and the boat is thrown down in the water and capsized; they were so arranged that they could be promptly lowered and got into the water. They are numbered on each side, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Mr. White—Did they alternate?

Mr. Barnes—Yes; just like the berths in a sleeping-car. You and I understand that. The "Oceanic's" boats were lowered and manned, and all the lives of those who got into the water and went over the side of the "Chester," and not over the bows of the "Chester," on to the deck of the "Oceanic," were saved by the boats of the "Oceanic." The "City of Chester" did get out, or make an attempt to get out, one boat, but the discipline and the order of this steamship "Oceanic" saved the lives of all that were saved on that occasion. The rest of the people of the "Chester" saved themselves by going over the bows, through the gap, over on to the "Oceanic" while the ships were connected. The explanation of this collision is evident, and I think will be proven. Whether it is or not, it is contended on behalf of the defendant that it

conducted its business in the navigation of that ship in accordance with law; that it adopted every known precaution and exercised the best care to prevent this collision, all possible care to prevent this collision; that it tried in every way to prevent it and was unable to do so, although the ultimate reach and finish of human skill was applied before the disaster and after it occurred, but to no purpose. We shall undertake to show you what the matter was, and I think we shall establish our proposition. The "City of Chester" is a steamer between 1100 and 1200 tons burden. She was brought out here in 1875 or 1876; she was to go into the coastwise trade; she was a safe enough boat, but a perfect vixen at steering. She was hard to be handled and notoriously so, that the men on board of her who were competent to steer, I say, we will show your Honor that more than one left the ship because they would not take the risk of going into the wheelhouse to steer her.

We will show, I think, that that was known to everybody, from the Captain to the Steward's boy, on board of the Chester. She was extremely difficult to handle under the conditions that existed there at the time of this disaster. I have said to your Honor that this was a flood tide; the tide was coming in, running a six or seven knot tide. As your Honor will see from the confirmation of the coast, there must occur at this point tremendous set-offs or eddies from the San Francisco side when the tide is pouring in from the whole Pacific Ocean, and when, in this narrow place it strikes the land it causes the water to run in eddies, currents and rips that are not easy to handle or overcome. When the Chester came out there behind Fort Point she

caught the full force of that tide, and notwithstanding she put her helm, I presume, to starboard in an effort to send the ship to port, the force of the currents there seized her bow, and the steering purchase on the helm, not being where it could counteract the effects of this eddy, the helm went to starboard, and the rudder was so placed that it threw her off to the right, and the current caught her irresistibly and took her right down in that way, right straight across this place, and as the sea was coming in this way, she was seen to be coming at full speed—as the sailor phrase goes, I think, “with the bone in her teeth”—big, white foam dashing away from her bow, and she was borne right across over to the *Oceanic*.

Now we shall contend to your Honor that if that or anything like it occurred, that the “*Oceanic*” is not responsible for the difficulty of navigating the “*Chester*,” nor for her obstinacy in refusing to mind her helm under the conditions that existed there. If that was known to anybody, it was not known to the officers of the “*Oceanic*.” They were not presumed to know what was the trouble with the steering quality of this craft, and they had a right to presume that the distance was, at the time they saw her, ample for her to go right by without any danger; and that, so far as the passing of starboard side to starboard side, or, as they say, “Green to green lights,” which is the same, they had a right to presume that this ship when she answered the signal, when she gave no danger signal, when she had not communicated or intimated to them in any way that she could not be handled nor steered, that they had a right to presume that the “*City of Chester*” would do what she said she would do, and could

do what she said she would do. That she did not do, and the whole disaster, as we claim, is due to no mistake in navigation—no errors in handling, no omission, no want of precaution whatever on the part of those on the ship “Oceanic.”

Now, there is another proposition to which I wish to call your Honor’s attention. The result of this accident was most fortunate. If the “Oceanic” had not conducted itself in just the way she did and the “Chester” had come into the Oceanic, instead of having a few people to look out for, there would have been eleven hundred passengers on board that ship that would have been put in peril by the manner in which this vessel was handled and steered. I do not criticise Captain Wallace at all, for I understand him to be a good mariner, a good officer, as well as a gentleman in private life, but he had a craft that was practically unmanageable under those conditions that were found to exist there at the time. He had come out there from behind Fort Point, the forward part of his ship caught the full force of this incoming tide, and, instead of carrying the ship away, as his steering signal said he would do; instead of the ship minding her helm and obeying it and go in the direction in which the helm told her to go, she swung right across the place and came right down upon the bow of the “Oceanic,” and it was about in that position (indicating) that the collision occurred, as I have said.

Now, then, where did this disaster occur? It was a curious circumstance, and, there being no jury here, I suppose there will be no objection to my mentioning it, that there was a great divergence of opinion as to the point at

which that collision occurred. Some of those who testified said that the "City of Chester" was close in here (indicating), near to Fort Point, and that the "Oceanic" came in on this side (showing) in such a way that the "City of Chester" could not get away from her, and that the "Oceanic" ran her down at this point, when she could go nearer to Fort Point than she already was, and they stuck to it with great pertinacity. The navigators who were on board the "Oceanic," and who knew as precisely the way up that harbor from where they were as your Honor knows the way from the bench to your Honor's chambers; knew when they passed the ten-fathom buoy, knew where they were when they were in plain sight of Bonita Point; knew where they were when they passed Point Diablo; knew where they were when the collision occurred, because they were just off Lime Point, and they so testified that there was where the collision occurred, instead of down here (indicating), and there was where it occurred. Which of them say right? It is an interesting question and a somewhat important one.

We shall show your Honor that within a few hours, I do not know whether it was three, or four or five, but almost immediately after the accident, as soon as arrangements could be made, Captain Whitelaw, whom Your Honor knows, the wrecker and diver, had a communication with Goodall, Perkins & Company about the ship, and they said they did not think it was any use to try to do anything because she had sunk in sixty fathoms of water, and, of course, we all know that at sixty fathoms, diving operations, and the processes by which a sunken ship is eliminated from the locker of Mr. Jones cannot be availed

of. Still, Mr. Whitelaw went out with his tug and his men and found the ship. Now, the proof of the pudding is the eating, in my judgment. Here was a ship whose position was located by the most scientific methods (which will be explained to Your Honor), the character of the soundings, the methods by which the precise location and direction and position of the ship as she lay on the bottom of the bay, were ascertained, and were ascertained on the same day of the disaster during that very afternoon, and when Captain Whitelaw found her on that day she lay at a point indicated on this map by the concentration of these red lines here. Her bearings were taken by Captain Whitelaw, and she lay in a direct line with Point Bonita and Point Diablo. This line (indicating) extended from Point Bonita to Point Diablo and protracted struck the ship, and this course shows a line from the point where the ship lay to the needles and is indicated on here. And that was another course by which her position was determined. The third line was by taking the sight from Fort Point so that on the afternoon of the day of the disaster Captain Whitelaw located her at the concentration of these lines. This one from Point Bonita to Point Diablo, to the point where she lay; this to the Needles and from there to Fort Point,

The question subsequently arose in the minds of counsel as to what had become of her when these people began to swear in this way as to her exact position. The question arose in the minds of counsel: "Well, what has become of her, anyhow?" and Captain Whitelaw was sent out again, with witnesses, for the purpose of determining where the ship was then. That was last November. They

went to the point where she was located before, and when the plummet went down, she lay precisely where she lay three hours after the accident, in precisely the same direction, precisely the same bearings and they went away, knowing with as much certainty the position where she lay as the certainty which I have in walking from here over to that clock and designating where it is.

It was said, and I have no doubt that there will be now, conflicting testimony upon this proposition. There will be persons who will say that that collision occurred right off Fort Point, and not where it did occur.

After these vessels struck, there was a small interval of time; it was precisely six minutes after the collision occurred between the vessels that the Chester was observed to be sinking, and by the order of the Captain, and upon the advise of the pilot, or by the command of the pilot and by the advice of the Captain, I do not remember which it was, but, at all events, intentionally the ships were kept fastened together as long as they could be for the purpose of saving life and giving everybody a chance to get off who could do so. At last, after about six minutes—I think it was just six minutes—it was found that the Chester was sinking, and the Oceanic pulled back, and when she was detached from her—the moment she was detached—the Chester went right down into the water and lay there, and is there now.

The points, then, to which I wish particularly to draw your Honor's attention, and that without knowing or understanding in any way what these libellants here claim, are that the Oceanic did not do what it ought not to do; that it owed duty which it did not perform to the Chester,

and without the slightest idea as to what they are going to claim, we make this opening of our case, desiring, as we think is proper, that your Honor ought to be informed somewhat of the circumstances of this case, and if I have taken too much time, I beg your Honor's pardon, but we wish to put your Honor, at the outset, into as full possession as we can of the conditions and circumstances connected with this collision, no matter which way the facts cut. We want your Honor to get the facts fully, fairly, without objection or cavilling, and we want to ask your Honor for a decision upon the broadest grounds, and I beg your Honor's pardon for taking up so much time.

Mr. White—I want to state that there is not going to be very much difference between General Barnes and myself in regard to these facts which have been set forth in the General's very elaborate statement. I do not think that there will be a great difference, but I wish to state here that very many witnesses that I am necessarily obliged to call are, from the position they occupied on that day, unfriendly to us; that is, I do not mean that they are going to be untruthful at all, but from the position that they occupied they are necessarily unfriendly to our side, and would attempt to explain away everything that occurred. The points upon which we rely would be very brief, except for the contention that the General makes as to some of the matters in regard to the position of the ships, and perhaps the steerage of the City of Chester. His statement of facts is substantially what we expect to prove. We shall make some modification of that by our testimony, and I hope that by calling—after listening to his statement—I hope that by calling only a few witnesses, that

we will be enabled, by what those witnesses say, and so much of the General's statement as is not in conflict with what the witnesses say, we will accept, and will be ready to rest our case.

(Recess until 2 o'clock P. M.)

AFTERNOON SESSION.

LOUIS MEYER. Called for plaintiffs. Sworn.

Mr. White—Q. What is your name?

A. Louis Meyer.

Q. What is your calling, Mr. Meyer.

A. I am Pilot of this port.

Q. A pilot in the San Francisco harbor?

A. Yes, sir; bar pilot and harbor pilot.

Q. Were you such pilot on the 22d of August, 1888?

A. Yes, sir.

Q. Do you know what is called the China steamship "Oceanic?"

A. Yes, sir.

Q. Did you board her and bring her in on the morning of August 22d, 1888?

A. Yes, sir.

Q. Go on and state to the Judge in your own way everything that there was about bringing in that ship up to the time of the collision with the "City of Chester," and the sinking of the "Chester."

A. I boarded the ship about 8 o'clock A. M.

The Court—Q. Eight o'clock in the morning?

A. Yes, sir; somewhere to the westward of the whistling

buoy, and steered towards the whistling buoy, and when the whistling buoy was abeam, bearing south southwest, in my opinion, about a mile to a mile and a half off, I changed the course for the heads, which is about northeast by east. After I had given the orders to go slow ahead, put the engines slow, and keep a very good lookout forward, and told the second officer who was there to sound the whistle and to give the sound not less than once a minute. In that way we proceeded.

Q. What was the state of the weather at that time?

A. The weather was foggy, but it was not constant, dense fog. Sometimes we could see as far as a mile and a half, and sometimes we could see more than a half a mile; never less than about a half a mile.

The Court—Q. What was the state of the tide?

A. The tide should be about slack water, but just making a flood. It was low water that morning at 6:15. In my opinion the tide should run out an hour and a half more. That would cross the bar at slack water, and would meet the young flood at the heads. While we were going on near the nine-fathom buoy we met a large vessel at anchor with a tow-boat at the head of her with a line out, ready to tow her in. I steered a little towards her, and asked the Captain of the tow-boat what kind of weather it was inside. He, I supposed, had come out that same morning. The answer was something I could not understand quite distinctly, but it sounded like "yes." He said something more than "yes." I made out it was "yes." We proceeded slowly on the same as we had done before, the vessel going from five to six knots, the whistle sounding every minute, or less than a minute. At that time we

heard the whistle of the North Head, Point Bonita, a little on our port bow, as we were going along, plainer and plainer. It seemed that we would pass it in about a very short distance. The whistle sounds when you get near to it higher. You can judge about how far you are off by the sounding of the whistle—the height of it. When we came abeam, which it was about 9:19, we saw the loom of the land through the fog.

Mr. Barnes—Q. Which land?

A. Bonita Point, at 9:19. I said then, and sent orders down below to go as slow as they possibly could; dead slow; just enough headway to keep steerage way on the vessel, and starboard half a point. With that course we made Point Diablo very plain.

The Court—Q. What was that order?

A. Starboard half a point on our course. Northeast half East. With that course we made Point Diablo very plain, not more than from a quarter to half a mile. Since coming in from Diablo we heard another steamer's whistle. I must say here, that previous to this, I had a conversation with the Captain; he wanted to know how the tides were, and if vessels were coming out. We had a long conversation about this. I told the Captain it would be flood tide and there were no craft coming out, no vessels, and but one steamer would come out this morning, which will leave the city at 9 o'clock; that is the only thing I know of coming out. When we neared Point Diablo I heard this whistle way inside. The weather was calm and the water just as smooth as glass. We could hear everything very plain. I heard this whistle on our starboard bow; I told the Captain, "That is, I believe, the steamer

coming out." "All right," says the Captain, "we will take care of her." After passing Point Diablo the steamer came nearer and nearer. We could hear his whistle, and of course we could hear our whistle. It was if he answered every blow to our blow. I said, "Now it is time to give him two distinct whistles to tell him we will starboard; he is now on our starboard bow; he is going this way, so that he may put his wheel starboard and clear us." He answered directly with two distinct whistles. At the time we saw the loom of him in the fog coming towards us; pointing towards our amidships, and the hull came out plainer and plainer. He seemed to be moving a little bit to starboard. It was only for a moment or two. She seemed to be under the influence of her port helm. I sang out, "Give him two more whistles." These two whistles were blown, and he answered them again, but instead of the ship answering the helm, as it seemed, I don't know whether there was something in the way, he came as under a port helm coming this way, right towards us. I said to Captain Metcalfe, "There will be a collision as sure as can be. I don't see how he can miss us; put your engines full speed astern." We were going then at the rate of not more than from 3 to 4 knots. We put the engines full speed astern. They could see that our vessel was stopped, and more, that she had sternway. I looked to see if she had stopped. I said, "We can see that she is going astern by the water of the propeller coming forward." He said, "Yes; but she is coming right for us; I think she will hit us on our starboard." Instead of that she came at a good rate; just cleared our stem, but struck with her port bow on our stem.

Mr. Barnes—Q. Take those two models and show how it was?

A. This being the "Oceanic," this was the "City of Chester." As she was coming we could see plainly the masts and funnel in a line like this (describing).

Mr. White—Q. Was that after the first whistle or the second?

A. After the first whistle.

Q. Immediately after the first whistle?

A. After the first whistle she hove in sight.

The Court—Q. The masts and funnel were in line?

A. After the first whistle, when she hove in sight, we did not see that she moved under her starboard helm as she ought to, and we gave another two blasts of the whistle, and he answered again two blasts of the whistle. Then he did not move to starboard as he ought to have done. As soon as I saw she moved this way, we went full speed astern, and she came just like this (illustrating).

The Court—Q. If you were going full speed astern, how is it that you did not keep away from her?

A. We were away from her altogether. We never pointed for her; we pointed that way (describing). He pointed for us. He ought to have kept away clear from us. We never pointed for him at all. When we struck, he must have headed about North to Northwest or North to Northeast. We never altered our course. At that time when she was this way, a moment before the collision, I could see Lime Point very nearly about that on our port bow; that showed that we did not alter our position or course at all. We laid right there that still. She had just commenced a little sternway when he came like that

(illustrating) with a good headway. I said to the Captain, "here she is coming right into us." She came just like this (describing).

Mr. White—Q. I understand you to say that when you reached somewhere near Point Bonita, that you were enabled to see that point?

A. We saw the loom of it through the fog; the black loom of it.

Q. The point loomed up through the fog?

A. The upper land.

Q. Point Bonita rises to quite a high hill there?

A. Yes, sir.

Q. You could see that looming up through the fog?

A. Yes, sir; the land is perpendicular up and down.

Q. About what direction were you from Point Bonita at that time?

A. We were at the southeast of it. We steered north-east, and it was abeam.

Q. How far a distance were you from Bonita Point when you first saw it?

A. Not more than half a mile.

Q. Was it about at this point? Put your vessel where you were at the time you think you saw Point Bonita on the blackboard.

A. About there (illustrating).

The Court—Q. That is when you first saw Point Bonita?

A. Yes, sir, when it was abeam.

Mr. White—Q. Was it at that time that you changed your direction?

A. At that time I changed my direction half a point.

Q. A half a point further to the north?

A. Yes, sir.

The Court—Q. What course were you on at that point? What was your course?

A. Our course was northeast by east from the outside. At that point I changed to northeast half east.

Mr. White—Q. Northeast half north?

A. To northeast half east.

Q. For what length of time, or what distance, did you continue on this new course?

A. We saw Diablo; we came about this way; we saw that, I should say, about eight minutes later.

Q. How far off were you from Point Diablo?

A. About a quarter of a mile.

Q. Could you see Point Diablo from the point that you first located her?

A. No, sir.

Q. You think you were about a quarter of a mile below Point Diablo?

A. Yes, sir.

Q. How did you signal the outcoming steamer, the "City of Chester," before you reached this point opposite Point Diablo, or afterwards?

A. At Point Diablo we blew our common fog signals.

Q. Your fog signals of one minute each?

A. That is all.

Q. About what point were you when you first heard the fog signals of the "City of Chester?"

A. We heard them at Point Bonita already.

Q. About what direction did they bear from you, so

far as you were able to tell from the sound, at the time you first heard them?

A. They were well on our starboard bow.

Q. Still to the front of you?

A. No, sir; well on our starboard bow away to our right.

Q. How many points on your starboard bow do you think the sound was when you first heard it?

A. She must have been three points on our starboard bow.

The Court—Q. Could you locate her on those points on that diagram in general direction?

A. Yes, sir.

Mr. White—A point is 30 degrees?

The Court—No, 11 and a quarter.

A. I fancy she must have been here somewhere when we heard her first signal.

Mr. White—Q. When you were somewhere opposite Point Bonita?

A. Somewhere here (pointing).

Q. You think she was perhaps two and a half or three points off on your starboard bow?

A. Yes, sir.

Q. As she approached you, before you saw her at all, was there any apparent change in her direction, judging from the sound of her whistle?

A. Not very much.

Q. She appeared to be about three points off on the starboard?

A. That is what she was.

Q. When you first sounded the two whistles sig-

nifying that you were going to starboard, had you yet seen her?

A. No, sir.

Q. How long was it after you sounded the first two whistles before you saw the "City of Chester?"

A. That must have been about 3 or 5 minutes.

Q. From 3 to 5 minutes after you signalled her that you would starboard, and after you heard her signal that she would starboard?

A. About that.

Q. Where was she, so far as you are able to locate, at the time she first appeared to you out of the fog?

A. Two and a half to 3 points on our starboard bow.

Q. And about how far from you?

A. I should say about half a mile.

Q. Was that the place that you say you could see from where you were, that you could see that her two masts were in line with the pilot-house of the "Oceanic?"

A. Yes, sir.

Q. That indicated to you that she was coming directly to the point that the "Oceanic" then occupied, if she was in motion?

A. I could see that she comes right for the amidships of the "Oceanic."

Q. She was coming so that if the "Oceanic" had remained stationary and had she kept what was apparently her course, she would have struck the "Oceanic" amidships.

A. That may be; I think so; apparently.

Q. How long did she continue in that position before you sounded the second whistle?

A. About the time.

Q. About what length of time was there, as near as you are able to estimate, between the first whistle to starboard that you sounded, and the second whistle to starboard sounded by you?

A. A very few moments.

Q. How near to you was the "City of Chester" at the time that you sounded the second whistle?

A. About half a mile, as I could judge.

Q. I understand you to say she was about half a mile when you first saw her; is that right?

A. Yes, sir.

Q. I want to know how near she was at the time you sounded your second whistle?

A. When she hove in sight I sounded the second whistle.

Q. When she hove in sight?

A. Yes, sir; at that time.

Q. I understood you to say at first, that you saw her immediately after sounding the first whistle?

A. It was a few moments; immediately; a few moments.

Q. About how many minutes do you think, between the first and the second whistles?

A. It was hard to say; maybe 2 or 3 minutes.

Q. At that time the "Oceanic" was under what headway?

A. Dead slow.

Q. Dead slow would be how many knots an hour?

A. I should say from three to four knots, with the "Oceanic."

Q. In estimating that she was going dead slow, were you estimating the tide at all?

A. This was going through the water; nothing to do with the tide.

Q. There was a tide, was there not?

A. Yes, sir; that was the headway through the water to keep her steerage.

Q. Without considering how much the tide would carry her?

A. The tide would have nothing to do with that.

Q. You were riding in on the tide, were you not?

A. Yes, sir.

Q. Do you mean to have the Judge understand now that 3 or 4 miles per hour was her total advance, tide and all, or 3 or 4 miles without tide?

A. Without the tide.

The Court—Q. Through the water?

A. Through the water, to keep her steerage way.

Q. That was not the rate she was going, as compared to a point of land?

A. No, sir; this was through the water.

Mr. White—Q. Can you tell how fast she was coming in as compared with one of the points of land that you could see?

A. I have no idea of that. I don't know how the tide ran. I estimated there was very little tide at the time. It was so close in shore. The first of the tide makes in on the south shore; the last of the tide makes in mid-channel on the north shore.

The Court—Q. This was the young flood?

A. This was the young flood. It could not have run very strong.

Mr. White—Q. There was not very much time on her?

A. I don't think there was very much; may be 2 or 3 knots young flood.

Q. How long was it from the time you sounded the second whistle until you gave the order to reverse?

Mr. Barnes—He has already stated that at the same time he caught sight of her and saw how she was headed he gave the order to reverse.

The Court—He used the word “immediately,” and then qualified that by saying “two or three moments.” Do you want to find out what he means by that?

Mr. White—I want to find out exactly what my question indicates.

The Court—He has answered your question, that he immediately gave the order to stop.

Mr. White—Immediately, as used by a witness, is not a certain expression.

The Court—You can ask him further questions as to what he means by that.

Mr. White—Q. How long was it from the time you sounded the second whistle until you gave the order to reverse?

A. It was the same time; no time elapsed, when I gave the second whistle; about half a minute; I said “immediately.”

Q. Did you give the signal to the engineer to reverse before you got the “City of Chester's” reply to your second signal?

A. After the second signal?

Q. Afterwards?

A. Yes, sir.

Q. What I want to know is, whether, after you got the second signal from the "City of Chester" saying that she would starboard, that you waited at all to see whether she would or not?

A. I could see the "City of Chester" at the time, but she was not moving as she ought to do.

Q. Why did you sound that second signal?

A. To make sure that he would starboard a little more.

Q. Then, when she did signal you that she would starboard, did you wait at all to see whether she would or not?

A. I could see that she did not; then reversed right away.

Q. Then, as I understand you, after you got the second signal from the "Chester" that she would starboard, you waited a little while to see whether she did starboard or not?

Mr. Barnes—He did not say so.

A. I did not wait a little while.

Mr. White—How long did you wait?

A. I immediately gave right away the signal to reverse, as she did not move according to her signal.

Q. Had you determined to reverse before you got the second signal from her?

A. No, sir.

Q. When she answered you that she was going to starboard, and the plan that you both had of passing was

acquiesced in by her, why did you immediately reverse?

A. Because after the first whistle I did not see her yet; between the first and second whistle she hove in sight. When she came in sight, and I saw she had not acted on the first two whistles to put the wheel hard astarboard, I blew two whistles again.

Q. What for?

A. To make it more sure, because I starboarded then myself; hard astarboard; I thought he would do the same, but he did nothing.

Q. Then the second signal was not sounded by you, to get her to starboard?

A. Certainly; that is what it was given for.

Q. She agreed to starboard?

A. When I gave the first or second whistle—when I gave a signal like that, that means to tell him I starboard and want him to do the same. He answered, “I have done the same;” that is his answer.

Q. If he did starboard at this time, and you reversed and carried you both back, was he not more likely to run into you than if you had kept your boat in advance.

A. No, sir.

Q. What I want to know, is, did you reply at all on that second signal that you got from the “Chester?”

A. Yes, sir.

Q. What did you do under that signal?

A. I put the wheel to hard astarboard.

Q. You had already starboarded?

A. And put the engines full speed astern.

Q. Did you keep the helm hard astarboard at the same time that you threw your boat full speed astern?

A. Yes, sir; I kept the wheel as it was.

Q. That had the effect of bringing the head of your boat around to port, did it not?

A. Not very much, when she has no headway on her.

Q. If your boat is going backwards, and you have your helm hard astarboard, which way does it throw the bow of your boat?

A. To the right, but not when she lays dead still, to any amount, and I saw that she was not throwing that way because I had Lime Point right on our bow the same as it was before. I saw she did not alter her position at all.

Q. At the time that you sounded the second signal to the "City of Chester" and got her reply, did it look to you as if there was any risk of a collision?

A. After she had sounded. I knew she could not clear us.

Q. You knew she could?

A. She could not; she could not clear us, because she was under, as it appeared, port helm instead of starboard.

Q. I want to ask you once more, why did you sound that second signal to the "City of Chester?"

A. Because his first signal was answered but not obeyed.

Q. After the first signal was answered but not obeyed, and you saw the "Chester" there was some such uncertainty in her movements that you did not know what she was going to do, is that so?

A. That is what it was.

Q. So that you sounded the second signal in order to verify the first one?

A. That is correct.

Q. When you verified the first one, you found she was going to starboard ; is that right?

A. She was going to port.

Q. She had starboarded her helm. I am not as good a sailor as some people, and I do not know I make myself understood. She was going to your right ?

A. She was going this way (describing).

Q. I know by the position of these two dummys.

A. She went ahead of us instead of this side.

Q. Then you felt certain after the second signal, that she had starboarded her helm, or promised you that she would, and she was trying to pass on your starboard side ; is that right?

A. I don't know if she tried.

Q. So far as her signals?

A. So far as her signals she did.

Q. You believed at that time she was trying to pass on your starboard side, did you not?

A. At the time she blew the whistles I thought she would do so.

Q. At the time of the second whistle?

A. I thought she would do so.

Q. Did you, at any time, sound a signal of alarm to the "City of Chester;" several short blows of your whistle; five or six?

A. I did not think it was necessary.

Q. Why not?

A. Because she answered my first way signals, my two whistles.

Q. But you tell me that although she answered those, you saw that she was not going to port herself?

A. It appeared to me that she was moving a little that way, as I have stated before, but very little, and soon came the other way; that is why I blew the whistle again.

Q. Did you reverse full speed astern before turned she this way?

A. No, sir.

Q. That is, turn to the right?

A. No, sir; as soon as I saw she turned the wrong way, I reversed the engines.

Q. How long was it that she swung around in that way, after you received your second signal?

A. Right after sounding the whistle; right after the signal was given.

Q. You cannot estimate that time at all?

A. Right away.

Q. Within a quarter of a moment?

A. Something like that; right away.

Q. Half a moment?

A. Yes, sir.

Q. Almost immediately?

A. Almost immediately.

Q. When she did that, did you sound any further signals at all?

A. No other signals.

Q. But you gave the signal to your own boat then to go full speed astern?

A. That was it.

Q. Did you sound any kind of signal to indicate to

the "City of Chester" that you had signalled your boat to go full speed astern?

A. I could not do that.

Q. The second signal of two blasts was the last signal that you gave the "City of Chester"?

A. Yes, sir.

Q. At the time you speak of, you say when she hove in sight she was about two and a half or three points on your starboard bow, and about a half a mile distant?

A. Yes, sir.

Q. At that time could you see this south shore?

A. Not at that time; I did not look. I had not time to look. I might have seen it.

Q. You might, perhaps, have seen it?

A. I did not look.

Q. You have so much to do, you did not look?

A. I did not look.

Q. You had, however, before that time, seen some two or three points on the north shore?

A. Yes, sir; I may say this. I remember now that the Captain said, he stood on the starboard side and he said, "I see the loom of the Fort." That I remember he told me.

Q. He told you he saw the loom of the Fort?

A. Yes, sir.

Q. That is, the Captain mentioned that to you before you signaled to the "Chester" that he saw the loom of Fort Point, or the Fort?

A. Yes, sir; abaft our beam. I don't know exactly what he said—abaft the beam. I did not look. I had no time to look.

Q. That was before you signaled to the "Chester" at all, was it?

A. That was a few moments before the collision occurred.

Q. Was it a moment before the collision that you and the Captain were talking?

A. It was between the second blast of the whistle and the collision.

Q. Between the second blast of the whistle and the collision?

A. Yes, sir.

Q. The Captain was telling you he saw the loom of Fort Point?

A. Yes, sir.

Q. If you had brought your ship in along the south shore, and the "Chester" had gone out along the north shore, would there have been any collision?

A. I cannot tell that.

Q. You cannot tell that?

A. I could not tell that.

Q. How much sea room is there at the narrowest point in the channel there?

A. Seven-eighths of a mile.

Q. Is seven-eighths of a mile of water deep enough for a ship like the "Oceanic?"

A. Between the buoy at the Fort and Lime Point there is any amount of water.

Q. You do not know the dimensions of the "Oceanic," do you?

A. Yes, sir.

Q. What are her dimensions?

A. I could not tell you very exactly, but she is 2800 tons registered tonnage.

Mr. Barnes—Thirty-eight hundred?

A. She is very nearly 3000 tons, I think; I forget exactly.

Mr. White—Q. How long is she?

A. I could not tell you exactly; I should say 380 feet long.

Q. How wide?

A. She may be 45 feet wide, or near that.

Q. Do you know whether or not in this collision the "Oceanic" was damaged?

A. She was damaged a little.

Q. What damage was done to the "Oceanic?"

A. That I cannot tell you exactly; it was on the plates near the stern.

Q. At the time of the collision and until the "Chester" went down, I suppose you remained in the pilot house of the "Oceanic?"

A. No, sir.

Q. What did you do?

Mr. Barnes—He was not in the pilot house at all.

A. I was on the bridge.

Mr. White—Q. Did you remain on the bridge of the "Oceanic"?

A. The captain says, as soon as it looked like a collision, "You go forward quick and see what is going on there, and keep the vessels together as close as you can, and let me know what you want to do."

Q. You went forward, did you?

A. I went forward.

Q. From that time on you did not go back to the bridge until after the "City of Chester" went down?

A. Not until after she went down.

Q. You went forward right at the bow of the "Oceanic" as soon as you could get there after the collision?

A. Yes, sir.

Q. About how far back from the "Chester's" bow did she strike?

A. She struck about abreast of the foremast; about on the port bow.

Q. How far back was that foremast from the bow at the extreme point?

A. I could not say exactly; it seemed to me about 25 to 30 feet.

Q. How far, so far as you were able to judge, did the bow of the "Oceanic" go into the side of the "Chester"? how far did she cut into her?

A. She went a good way into her.

Q. How many feet?

A. I could not say exactly how many feet; several feet.

The Court—Q. You stated in the first part of your examination that the young flood was making up on the south shore.

A. Yes, sir.

Q. Does the young flood make up on the south shore first?

A. Yes, sir.

Q. State its direction, taking that point there, showing the direction of the young flood.

A. The young flood makes in here first, and strikes

this shore, and makes up that way and goes around that way (illustrating on the diagram on the blackboard). It is young flood here and sometimes ebb tide there, or slack water, and nothing at all on the north shore.

Q. You were not in the young flood then that morning?

A. No, sir; I wanted to be where there was no flood, if possible.

Q. You must have been following in on slack water?

A. That is what I judged about.

CROSS-EXAMINATION.

Mr. Barnes—Q. How long have you been a master mariner?

A. About 25 years.

Q. How long have you been a harbor and bar pilot?

A. Nine years now, and four years when the accident occurred.

Q. Had you taken in and out of the harbor other vessels of the class of the "Oceanic?"

A. Yes, sir.

Q. You say that when you came in that morning, you passed this four-masted British ship at anchor, fastened to a tug and making preparations to come in after you?

A. Yes, sir.

Q. Do you know whether that four-masted British ship and the tug came in after you or not?

A. Yes, sir.

Q. Came right in along after you?

A. Came right in while we were in the wreckage.

Q. If the "City of Chester" had obeyed the signal

that you gave to starboard the helm, that would have sent both ships to port and made you pass with the starboard side of each towards each other?

A. Yes, sir.

Q. If, when you gave the first signal, she had gone to starboard and answered your signal, was there any danger of collision?

A. Never.

Q. If, when you gave the second two blasts, meaning "We are going to the left, go you to the left," and he answered he had gone to the left, if he had minded his helm, then was there any danger?

A. I think there was no danger.

Q. Just as soon as you say that there was danger because she was not minding her helm, I understand you say you gave the order to your ship to go full speed astern?

A. Yes, sir.

Q. Was that order obeyed?

A. Right away.

Q. At the time of the collision, did the "Oceanic" have any headway on her, or was she going astern?

A. She had very little headway, if any; at the time of the collision, she had a little sternway on her.

Q. You were asked by Mr. White, if you did not give any danger signal. What is a danger signal?

A. A danger signal is a long blast of the whistle; an exceedingly long blast or several small toots.

Q. What is the object of the danger signal? When is it used? What is it for?

A. If given signals are not understood or acted against.

Q. In this case the given signals were understood and answered?

A. Yes, sir.

Q. Did you get any signal from the "Chester" that she could not answer her helm, or could not be handled where she was?

A. No, sir.

Q. What time, if any, was there from the moment you saw her and that she was not doing as she said she would do, and the time when you ordered the ship to go astern?

A. Several minutes.

Q. You do not understand me. Between the time that you saw that she did not answer the second signal by the action of the ship, how soon was it that you gave the order to send the "Oceanic" astern?

A. Right away.

Q. Do you now know of anything that you could have done as a pilot, in handling the "Oceanic," which could have prevented that collision?

A. There was nothing left undone that we thought could be done.

Q. Do you know of anything now that you omitted to do?

A. No, sir.

Q. That could have been done; that would have saved the collision?

A. I do not know of anything.

Q. Do you know of any rule or regulation regarding the conduct of steamships in a fog, either as to speed or as to signals, which was omitted by the "Oceanic?"

A. No sir; there was nothing.

Q. Was there any period of time from the time when you got opposite Point Bonita until the time of the collision, that this steamer "Oceanic" was going fast?

A. No, sir; she was going just dead slow.

Q. All the time?

A. All the time since passing Point Bonita.

Q. Was there any moment of time that the fog whistles were not sounded?

A. No, sir.

Q. I show you now this photograph of the "Oceanic." Show the Court where the bridge is?

A. This is the bridge.

Q. Where did you stand?

A. I stood amidships.

Q. Where was the Captain?

A. The Captain was a little to my right.

Q. Who else was on the bridge?

A. The second officer was near me, a little on my left side with the string of the whistle in his hand.

Q. Where did the string that connected with the whistle go? Where was the whistle?

A. This is the whistle in front of the funnel. The string goes right over a pulley for him to pull.

Q. Was he on deck or on the bridge, pulling that fog whistle from the time you gave the order after you took command at 8 o'clock until the collision occurred?

A. He was there always.

Q. Do you know where the first officer was?

A. He was with his watch in the eye forward, with the carpenter.

Q. Where was the third officer?

A. The third officer was left with his watch.

Q. What were they there for?

A. They were there to attend to their duties.

Q. What were their duties there coming into port?

A. To look out. The fourth officer was there.

Q. What was the fourth officer stationed in front of the pilot-house for?

A. He has to watch that the command is obeyed; the command from the pilot.

Q. Show the Court where the steering apparatus is; where the men are that steer?

A. Right in this place here.

Q. Under the bridge?

A. Under the bridge.

Q. What communication is there between the bridge and the steering room or pilot-house?

A. There is a large hatchway where we can see the men and talk to them.

Q. How were the orders on that ship communicated from the bridge to the engine-room?

A. By telegraph.

Q. Did they have the best apparatus of telegraph on board the "Oceanic?"

A. Yes, sir; the latest improvements.

Q. Were there only one or two telegraphs on the bridge?

A. Two, one on each side.

Mr. White—I object. This is not cross-examination.

The Court—It is not cross-examination, General.

Mr. Barnes—If there is any objection to it, all right.

Mr. White—I do not intend to question that matter at

all; therefore it is not necessary to go into it. I make no contention but what that steering apparatus of the "Oceanic" was all right.

The Court—Q. At the time of the collision was the "Oceanic" in sternway or going ahead?

A. The backwater from the propeller came amidship, so I thought she must have had a little sternway, or we could not have had water from the propeller coming towards amidships.

Q. What power of propulsion brought the two vessels together?

A. The sliding of the "Chester" toward us.

Q. It was the "Chester" that impinged on the "Oceanic"?

A. Certainly; we never pointed for the "Chester"; we pointed for open space. The "Chester" pointed for us and came towards us as if under a heavy port helm, in a kind of sliding way.

Q. Then the power at collision was on board the "Chester" and not the "Oceanic"?

A. That is what I believe; to my best knowledge.

Q. After the collision did you do anything on board the "Oceanic" to prevent the two vessels from pulling apart? You remained together for some time?

A. We remained together.

Q. How long?

A. Until the "Chester" went down. Just before she went down, I was away forward. The foreyard came down and nearly struck me, so close we were together then. Some one said, "Clear out." I had a rope over the bow, and had some passengers of the "Chester" on

this rope, and the second officer was there with his boat to take them from this rope. He had already one in his life-boat when this foreyard came down, and, unfortunately, I let go of the rope. I could have been killed if I had not let go. I did not let go altogether. I slid it through my hand and tried to take a turn on the forestay. The yard came down and struck forward just sharp on the "Oceanic's" head, and went down and took the boat and people and everything down.

Q. Did the bow of the "Oceanic" cut so far into the "Chester" as to bring down the foremast?

A. No, sir; this was when she was foundering. It looked to me but a very small cut; in fact, it was done naturally, sliding; it was not such a very heavy cut, because she floated forward, I should judge, over six minutes, sure.

Q. As I understand, there was no power of propulsion on board the "Oceanic" to set the "Oceanic" into the "Chester"?

A. Nothing at all.

Q. The force was on board the "Chester" coming down on the bow of the "Oceanic"?

A. It was a wide hole; not a sharp hole.

Q. That is not what I am talking about. What was the power that brought the two vessels together?

A. The sliding of the "Chester."

Q. And you had some stern way on board of the "Oceanic"? You were not on the bridge. You do not know if that was maintained or not?

A. The Captain told me to go forward. As soon as the collision occurred the engines were stopped and she

remained stationary. The Captain says "You jump forward quick and see if you can keep the stem of the "Oceanic" into the hole made in the "Chester."

Mr. Barnes—Q. What was the object of holding them that way?

A. To keep her afloat as long as possible.

Q. Will you show me on the diagram as nearly as you can about where the collision occurred?

A. It occurred somewhere here (pointing).

The Court—Q. Was there any drift at that time, or seaway?

A. No, sir, I do not think there was; the water was perfectly smooth.

Q. Did the vessel go down in the same spot where the collision occurred, or was there a drift one way or the other?

A. We drifted with the tide inwards.

Q. The vessel went down not at the place of collision?

A. No, sir.

Q. Is that the spot where the collision occurred (pointing)?

A. Yes, sir.

Q. Where did the "Chester" go down? Just point it out?

A. She must have laid about there (pointing).

Q. Then you think that after the collision, and up to the time she went down there was a drift inwards?

A. Yes, sir,

Q. On the tide?

A. Yes, sir.

RE-DIRECT EXAMINATION.

Mr. White—Q. The only object of keeping the stem of the “Oceanic” in the hole in the “Chester” was to keep the “Chester” afloat?

A. Yes, sir.

Q. Then the break in the “Chester” was so bad, that it was feared from the “Oceanic” that she would go down immediately if the vessels separated? Is that right?

A. That I do not know.

Q. You only know that you heard the Captain say to keep the vessels together?

A. Yes, sir.

Q. Do you mean to tell us that there was but one thing that would have saved the ship from colliding with you, after you first saw her, and that was that she should go to starboard; that she should obey her starboard helm?

A. Certainly.

Q. That was the only thing that would prevent a collision, from the time you first saw her?

A. Yes, sir.

Q. Then, from the time you first caught sight of the “Chester” you felt that there would be a collision unless she went to port?

A. Yes, sir.

Q. Unless she obeyed her starboard helm?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. If that is the condition of affairs, why did you sound the second signal?

A. Because she did not go that way.

Q. You sounded the second signal to get her to go that way?

A. Yes, sir.

Q. Then did you wait at all, to see if she did go that way?

Mr. Barnes—I do not like to interrupt, but counsel have already been over that ground with the witness two or three times.

Mr. White—It is the same question, but it is a very peculiar condition of affairs.

The Court—I will allow you to ask the question.

A. I saw she did not go that way. I saw she did not.

Mr. White—Q. When you saw she did not go that way after the second signal, you ordered your boat full speed astern, is that right?

A. Yes, sir.

Q. Let me see if I cannot refresh your recollection a little. Do you remember testifying before the Board of Local Inspectors of Steam Vessels, sometime, I think, about October, 1888, when they had an inquiry in reference to this, before Messrs. Talbot and Hinman?

A. Yes, sir.

Q. Do you recollect that?

A. Yes, sir.

Q. Your recollection of what occurred then was probably better than it is now?

A. It is the same.

Q. The same?

A. I fancy so; may be not.

Q. Do you remember at that time this being your un-

derstanding of it: "We saw the bow of the steamer to our starboard, the same direction as we had heard the whistle, and apparently by the white center in her bow, she appeared to be going at a high rate of speed. At that time we were able to see from one-quarter to one-half a mile. The steamer, as I observed, was going for about our bow, and Captain Metcalf said, 'What is he doing?' and I said, 'He has answered our whistle, and if he has complied with our signals everything will come out all right.' When we saw she was coming direct for us, I ordered the engines full speed astern." Was that right?

A. It was after the second two whistles.

Q. After you had watched her long enough to see she was not obeying the signal, then you went full speed astern; is that right?

A. That is right; that is what I said a little while ago.

Q. About how long would it be, from the time that she answered your signal, before, if she obeyed the signal, her course would show it to you?

A. I do not understand your question.

Q. How long would it be from the time that she gave a signal, and if at the same time she put her helm hard a starboard, before the course of the vessel would show she had obeyed it?

The Court—That would depend on whether she obeyed it or not.

A. I cannot tell that.

Mr. White—I am assuming the condition of the ship now that did obey and respond to the helm?

A. The ship never responded to the helm, by the looks of it.

The Court—Q. The question Mr. White propounds is this: How long after an order had been given and she obeyed it, would that have been apparent to you on board the “Oceanic?”

A. Certainly.

Q. How long after the order had been given, would you have noticed it on board the “Oceanic?”

A. Right away.

Q. If she had obeyed the order?

A. I would have seen it right away.

Q. Suppose after the second time you sounded the whistle and she had replied, and in accordance with her reply that her helm was hard a starboard, how soon would you have noticed that if the vessel was obeying her helm?

A. Right away.

Mr. White—Q. Does it not take some time after one of these vessels throws her helm from one side to the other before the vessel responds?

A. Not if she has so much headway as she had.

Q. You do not know what headway she had.

A. We saw the white volume of water under her bow, and the captain said to me, “She comes like a dog with a bone in her mouth,” at full speed. If she comes at that rate of speed she should answer immediately.

Q. She was running against the tide?

A. That made no difference to her headway through the water.

Q. It would make a difference in her appearance of having a bone in her mouth.

A. That is her headway through the water; that has nothing to do with the tide.

Q. The actual progress she would make, as viewed from the land here at Fort Point, might not be very great, though she appeared to have the bone in her mouth?

A. Yes, sir; she had great headway on.

Q. As I understand, you say, when you saw the "City of Chester" a half a mile away and some three points on her starboard bow, that nothing could avert the collision or disaster except her turning to starboard?

A. That is what it is.

Q. I will ask you another question. You have been for nine years a pilot, taking vessels in and out of the harbor?

A. Yes, sir.

Q. This disaster occurred over five years ago, so you had been a pilot some four years before that?

A. Yes, sir.

Q. Had you been familiar with this harbor before you became a pilot?

A. I ran a coasting steamer four years before that.

Q. How often did that bring you in and out?

A. Two or three times a month; twice a month.

Q. That is twice in and twice out.

A. Yes, sir.

Q. You know how the tides run, then, do you?

A. Yes, sir.

Q. In coming in here and seeing the "Chester" off this point, did you know she was in the tide?

A. I could not tell that.

Q. Why not?

A. Because I could not see her.

Q. When you did see her, did you know she was in the tide?

A. No, sir; she was in the tide as I was; she was in the flood.

Q. You knew she was in the flood tide?

A. Yes, sir.

Q. You knew that she was nearer to Fort Point, this south shore, than you were?

A. I don't know that.

Q. You did know it. You knew she was 3 points on your starboard bow.

A. She was near to Fort Point; how near, I don't know. I don't know how far she was from Fort Point. She must have been a half a mile.

Q. You knew she was nearer the south shore than you were, did you not?

A. Yes, sir.

Q. And you knew that at that kind of tide, the tide ran up strongly along the south shore here, across the channel between Lime Point and Fort Point, did you not?

A. It runs towards mid-channel, and then straight in.

Q. You were north of mid-channel?

A. Yes, sir.

Q. Your theory is not that the "Chester" was caught in the tide at all?

A. That, I cannot tell.

Q. Where the disaster occurred, and for a great deal of water on your starboard from the disaster, was water that was not affected by this turn in the tide from the south shore?

A. I was, perhaps, out of that set.

Q. The disaster occurred considerably north of the mid-channel?

A. Yes, sir.

Q. In the mid-channel, as I understand you, this tide does not set across the channel between Lime Point and Fort Point, but the tide sets straight in at that time, flood tide?

A. The tide sets across; sometimes more, sometimes less. She must have been in the tide or just coming out of it; she had been in the tide in that set before she reached me. It may be that the tide run in altogether at that time. It may have been here that the tide run in here and there at the same time. The "Chester" struck the heavy like this that sets round like this, and runs out here (illustrating).

Q. You were north of the mid-channel?

A. I did not put that exactly right. I ought to have made this line a little more this way.

Court—Q. Take the chalk and make that line?

A. It sets about there, so far as that; that would be the right way.

Q. That is the set of the tide?

A. That is the set of the tide at the flood.

Q. The question you answered when you put the other mark on was the set of the young flood?

A. Yes, sir.

Mr. White—Q. That is what you mean, that this is the young flood?

A. This is the full set of the tide at the full flood.

Q. You think on account of the water striking against the land here, and being deflected to the left, it is carried out pretty well towards mid-channel?

A. That is what it is.

Q. As near as you understand the position of the "Oceanic" you were north of mid-channel ?

A. Yes, sir.

Q. This is the position that you put the "Oceanic" in at the time of the collision ?

A. Yes, sir.

Q. About how far would that place be, where the collision occurred, from mid-channel ?

A. It must have been very near.

Q. Very near mid-channel.

A. She must have been very near mid-channel.

Q. Then you were coming in very near mid-channel ?

A. No, sir; the "Chester." I was on the north side.

Q. We will agree on this: That the "Oceanic" was here when the collision occurred (pointing)?

A. Yes, sir.

Q. Now, I want to know how far this point of collision is from mid-channel?

A. Pretty close.

A. Then, as I understand you, you do not want to say now, you were hugging the north shore?

A. Yes, sir; I was hugging the north shore; that is only a half a mile; only seven-eighths of a mile. From here to there is only a few hundred yards (pointing.)

Q. How far is it from there to the north shore?

A. We were a quarter of a mile from the north shore.

Q. How much deep water did you have on your port side?

A. You can go right on to the beach. It is very near deep water right to the beach.

Q. Then there was sea room so that you could have

gone nearly a quarter of a mile further north if you wished to?

A. If I wished to.

Q. When you first gave the signal and got your reply, the two blasts, how much did you turn the helm of the "Oceanic" to starboard?

A. At the second two blasts?

Q. No; the first?

A. At the first?

Q. Yes?

A. We put the wheel hard over.

Q. Hard to starboard?

A. Hard to starboard?

Q. The first thing?

A. Yes, sir.

Q. Never turned it after that?

A. No, sir.

Q. Do you place that as the point where you sounded the first signal?

Mr. Barnes—No.

The Court—That is where he saw Point Bonita.

Mr. White—Q. Can you locate on your line, about where the "Oanceic" was when the first signal was given by you to the "Chester"?

A. Just when we passed "Diablo"; after we had passed Point Diablo.

Q. About here (pointing)?

A. Yes, sir.

Q. Is that about right (marking)?

A. I think so, as far as I can remember.

Q. About how far was that from the point of collision; half a mile?

A. I don't think it is half a mile; it may be.

Q. How many times have you taken the "Oceanic" in and out?

A. Several times.

Q. Do you know upon what radius she can make a complete circuit, so as to face the other way, in still water?

A. I have never tried it.

Q. Don't you know she can turn clear round in half a mile?

A. I could not tell you.

Q. In clear, still water?

A. I never tried.

Q. You don't know anything about that?

A. No, sir.

Q. You are certain about that, that you put the helm hard a starboard and kept it there from the first signal?

A. Yes, sir.

Q. You did not change it at all, in fact?

A. No, sir.

Q. After you reversed full speed astern, you did not change it?

A. No, sir.

JOHN METCALF. Called for plaintiffs. Sworn.

Mr. White—Q. Your name is John Metcalf?

A. Yes, sir; that is my name.

Q. What was your calling in August, 1888?

A. Master Mariner.

Q. What vessel were you in command of?

A. The "Oceanic."

Q. You remember, of course, the bringing in of the "Oceanic" on August 22d, 1888, at the time of the collision with the "Chester?"

A. I remember perfectly.

Q. Go on and explain, in a narrative way, all that occurred from the time that you first located your vessel outside the whistling buoy up to the time that the "Chester" went down. I may ask you some questions after that for more particulars.

A. Early in the morning of August 22d, we were approaching Point Reyes; the weather became misty and foggy, gradually lifting; sometimes setting down, getting thicker and lighting up again. We ran in the given distance from the observations of the previous noon, stopped, sounded, and found ground somewhere about 25 miles from Point Reyes. Having found ground and ran the ship in at varying speed, according to the weather sounding at every few miles to verify the ship's position, eventually approached Point Reyes; stopped sounding because it was within the sounding signal distance, and picked up the whistle at Point Reyes; kept along the course we were steering, passed Point Reyes at an estimated distance of—I scarcely remember the distance now—but about three miles. I think that was the position I assumed the ship to be in, from the course steered, knowing that the course I had steered from the previous noon should put her about that far off the Point. I then proceeded on at varied speed until we were approaching the pilot grounds, as we got near the whistling buoy; stopped the ship and picked up the gun, a signal on board this particular pilot boat, and found it was outside of us, steamed slowly, picked up

the boat, got the pilot, and he took charge. He steered the ship in for the whistling buoy, which we picked up and passed it on the north side, probably about a half a mile off. We then shaped the course according to the pilot's direction for the north head and went along at varying speed, sometimes half, sometimes slow and occasionally stopped. When about half way between the whistling buoy and Point Bonita, we saw on our port bow a large sailing ship with a tugboat ahead. I suppose she was fully a half a mile from us. As we got near the ship, both the pilot and myself hailed the vessel, more particularly the tugboat, asking what kind of weather there was inside; but we were such a distance off, although we had stopped the ship to make things as quiet as possible, that we could not hear the reply. We could just hear a loud sound, but could not say whether it was yes or no or what it was. We then proceeded on slowly, steering for the north head, which is Point Bonita, and I told the pilot I wished him to keep to the north shore simply because that is the safest shore, where the government had placed all the fog signals on that shore, being free from danger, as a guide to the navigation of the port; the pilot said he would do so. We passed Bonita Point about half a mile off. We could just see the black loom of the land on our port side. The ship was then put at dead slow by the engines, and soon after, I don't know exactly how long, we passed Point Diablo. That we could see pretty well. We could see right from the water line up a considerable distance. I could not see the top of land. That place, I judge, we passed about a quarter of a mile. Soon after passing Point Bonita, in order to hug the north shore more surely, the

pilot altered the course about a point to the northward. When about in the neighborhood of Point Bonita, or somewhere between that and Point Diablo, we heard the first whistle of an outcoming steamer. Previous to this, I had had some conversation with the pilot as to the likelihood of meeting anything coming out. I said that I was glad it was flood tide that we were going in on, because we would have no schooners or any other small craft beating out on an ebb tide, which is the time they usually leave port, and the weather was sufficiently clear to let us take care of anything coming out in the shape of a steamer. Somewhere in the neighborhood of Point Diablo, or between that and a little further out, we heard, as I said before, the sound of a steamer's whistle, the fog signal going. Ours had been going continuously from the time we were making the land off Point Reyes, some hours before we came there, on account of the mist, going continuously at an interval of a half a minute. After passing Point Diablo some little distance, looking carefully on the starboard bow, which was the place we heard the signal of the outcoming steamer, I saw the dark mass of a hull looming up through the fog about two and a half points on the starboard bow; two and a half to three points. I said to the pilot at that time, "There is that craft." He said, "Blow two blasts." The second officer at the whistle blew two whistles, and our helm was put hard a-starboard at the same time. The ship, not having much way on her, turned gradually and slowly to port. Soon after that, watching this ship carefully, he answered these two signals we gave him. We gave him two.

Q. Two blasts or two signals?

A. Two blasts of the whistle, meaning "Pass me on the starboard side," to which we received an answer. If the ship had acted on that starboard helm, there is no reason why she should have passed any nearer than a quarter of a mile of us. Watching him carefully, we saw there was little or no indication of him acting on the starboard helm, and the whistle was repeated and was answered again. Immediately after seeing that there was no indication of the ship acting on the starboard helm, I said to the pilot, "What the devil is that fellow doing?" I had my hand on the telegraph at the time. I rang the telegraph, "Full speed astern" as hard as I could. At the same moment I sung out, "Full speed astern," and then I was watching the two ships carefully, because when we went full speed astern, before we struck the "City of Chester," I looked over the end of the bridge and I could see the back-wash from the propeller of the "Oceanic" coming up between the funnel and the bridge. It was perfectly certain that the "Oceanic" had little or no way on her at the moment we touched the "City of Chester." You cannot get the back-wash of the propeller up there if the ship has any way on her.

Q. No way through the water?

A. The "Oceanic" had little or no way through the water. At the moment the two ships came together, the "Chester" had considerable way on her. We saw no indication of her answering her starboard helm or obeying the signals mutually agreed on between us. About the time of the second signal, or very soon after, we could see the ship swinging rapidly as if under a strong port helm, and the "Chester" having considerable way on her, came

across the "Oceanic's" bow; for some little time it looked as if the "Chester" might run into the "Oceanic." I simply waited developments in order to give the necessary orders if she struck the "Oceanic" or got across our bows. She practically impaled herself on the "Oceanic's" stem. At the moment of collision, I told the pilot, Captain Meyer, "You run forward Captain Meyer, and help save life, and give me any order to keep the two ships together in case the ship is going to sink. I also gave orders to put the boats out, take forward life belts and life buoys, and see that the available men were at the stem of the ship, in order to save all possible life. The boats were got out, and were alongside of the bridge, two or three moments before the "Chester" went down. Five boats altogether I think were alongside of her. I hailed the third officer and one of the others, and told them to be careful when they took the boats to the "Chester" that they were not drawn down by the vortex usually made by a sinking ship. Directly we struck that ship; a great number of men, who I should judge to be the crew of the "City of Chester," came piling up over the bow of the "Oceanic," followed shortly afterwards by a number of others, some women and mostly men. The boats in the meantime had rescued a great number of people, one boat having in her about thirty-two. These were all got on board of the ship as soon as possible.

Mr. Barnes—Q. That is your boats, not the Chester's?

A. The "Oceanic's" boats; there was only one boat that I saw get away from the "Chester;" the only man that I saw on the "Chester" trying to get a boat out was the Captain, and I think one other officer, and probably

one or two passengers. There were three or four men altogether. About six minutes after we struck the ship, the "City of Chester" went down.

Q. About six minutes ?

A. About five or six minutes. When the ship went down, the pilot came aft on the bridge and said, "Captain, we will have to go ahead a little, or else you will be on Arch Rock." I said all right.

Mr. White—Q. That is after the "Chester" went down?

A. Yes, sir. We had gradually drifted in with the flood, and we had to go ahead a little, and the engines were stopped, and never moved again until we let go the anchor.

The Court—Q. How long did you keep your helm hard astarboard after you gave your first signal ?

A. I think the helm would be hard astarboard probably not more than 2 minutes.

Q. When did you change the helm ?

A. It was not changed until we were probably going clear of Arch Rock.

Q. Not until after the collision ?

A. Certainly.

Q. If your helm was hard astarboard and you had given the order of full speed astern, that would throw your bow to the right, would it not ?

A. Yes, sir; the helm having been starboarded the ship altered her course probably a point or a point and a half to the north; the propeller going astern checked the action of the rudder and brought her back much to the same position.

Q. That brought her closer to the "Chester" than she was before?

A. Yes, sir; but the way was stopped at that time; there was no way on the "Oceanic;" there could not be with the back wash.

Q. A vessel going astern with the helm hard astarboard, would swing to starboard and not to port?

A. Yes, sir; it would swing to starboard.

Mr. Barnes—Q. It depends on whether it has a right-handed or left-handed propeller?

A. It depends on whether it is a right-handed or a left-handed propeller. The "Oceanic" is a right-handed propeller. Therefore, it acted against her starboard helm, and brought her back to about the original way of her head, when we gave the order to go astern, because, if my memory serves me correctly, the ship's head was somewhere about northeast at the time we struck, and the two ships together.

Mr. White—Q. When was the order changed from full speed astern to something else?

A. Do you mean, when we put the engines full speed astern to prevent the collision?

Q. Yes; what was the next order given?

A. To stop, at the moment of the impact of the two vessels.

Q. Was the order to stop before or after the collision?

A. At the moment.

Q. At the moment of the collision?

A. I put my hand on the telegraph. I did it myself.

Q. You put that at stop?

A. Yes, sir.

Q. What was the next order given for the steering of your ship?

A. No order whatever; the ship having no way on her, any order to steer would be useless.

Q. At the moment of the collision, and after that, until the "Chester" went down, the "Oceanic" had no way on her at all, but the two vessels were floating?

A. About the moment that the "Chester" was sinking, the "Oceanic's" engines were given two or three turns astern, in order that the "Chester's" masts and yards might not come down and kill the men on the head of the forecastle. They were given only two or three revolutions astern, which cleared the two ships.

Q. From the time they collided up to the time that you saw the "Chester" was going to the bottom and that you must free the "Oceanic" from her, neither boat was under way at all?

A. The "Oceanic" was not. I do not know about the other boat.

Q. If the "Chester" was under way, she was carrying the "Oceanic" with her further off to the North, was she?

A. My own impression is that at the time of the collision the "City of Chester" was going astern.

Q. That you do not know for certain?

A. I could almost swear that the "City of Chester's" engines were going astern.

Q. You mean that the engines were reversed?

A. Yes, sir.

Q. You do not mean that the "Chester" actually had a motion?

A. Sternway?

Q. Sternway?

A. I know she could not have had, or else she could not have got cross the "Oceanic's" bow.

Q. Now, how far into the "Chester" did the bow of the "Oceanic" go?

A. I cannot tell. I was on the bridge.

Q. Do you know what kind of wound was made on the "Chester"?

A. I have no knowledge whatever.

Q. In about what direction did the "Chester" head at the time that she was struck?

A. I think—I could scarcely say—somewhere nearly straight across our bow; as nearly as I remember now.

Q. As nearly as you can remember, the situation of the two vessels was practically the same as those two dummies?

A. I think that would be right.

Q. You think the "Chester" was struck on her port side not far from her foremast?

A. Not far from the foremast, but abaft it I think.

Q. You do not know whether that made a raking wound or went straight in?

A. I cannot say; I was on the "Oceanic's" bridge all the time.

Q. From where you could see, could you see the water rushing into the "Chester" from either side of the bow of the "Oceanic"?

A. No, sir.

Q. The "Chester" was a good deal lower in the water than the "Oceanic," anyway?

A. A good deal lower.

Q. You say, as I understand, the same as Captain Meyer does, that you were about a quarter of a mile off from Point Diablo?

A. As near as I could estimate—a quarter of a mile.

Q. As you remember, your direction was about north northeast?

A. No, sir; about northeast half east.

Q. Northeast half east?

A. Yes, sir. Up to this first cross (pointing) it had been northeast by east. In order to carry out my wishes the pilot put her half a point more to the northward, in order to hug the north shore, which is the only safe shore to enter the harbor of San Francisco in foggy weather.

Q. How far were you from the north shore when the collision occurred?

A. About a quarter of a mile.

Q. At the time, or before the collision, did you see Fort Point at all?

A. I told the pilot I was watching to see if I could see Fort Point, but we were so far off Fort Point that I could not see it. I never heard any fog signal on Fort Point. I was watching for that. I told him I thought I could see the loom of the fort; I was not certain, but I could see Lime Point—the white fog-signal landing on it plainly.

The Court—Q. You say you could not hear the fog signal at Fort Point?

A. No, sir; you can never hear it unless you are right on top of it, or to leeward of it.

The Court—Q. What is the good of it?

A. None. When you are inside you can occasionally hear it, because you are to leeward of it and the sound is carried to you.

Mr. White—Q. Did you see Fort Point at all before the collision.

A. Not to swear to it.

Q. Did you see any high ground looming up over on that side?

A. On which side?

Q. On the south side?

A. No, sir.

Q. On the starboard side?

A. None.

Q. The fog was thicker on your starboard side than towards the north shore?

A. No sir; I could not say that.

Q. Was not the fog that morning floating around in clouds, sometimes settling in thick and other times blowing off?

A. Yes, sir; it would ease up and you could see quite a little distance, then it would shut down and you could not see barely a quarter of a mile.

Q. How was the water that morning?

A. Dead smooth.

Q. Do you know anything about the condition of the tide?

A. A good deal.

Q. What was it?

A. At that time, flood tide.

Q. That is, the tide was coming in?

A. Yes, sir; the tide was running into the port.

Q. You were riding in on the tide?

A. Yes, sir.

Q. How much clear water was there between you and the north shore, at your nearest point to the north shore?

A. A quarter of a mile, practically.

Q. Your nearest point to the north shore was the point of collision?

A. No, sir; I think about the same from Point Diablo to Lime Point; about the same.

Q. Why did you sound that second signal to starboard to the "Chester?" Why did you give that to the "Chester?"

A. Because we saw he was not acting according to his answer to the first.

Q. What was that given for; to ask him to starboard, or to order him to do so?

A. To verify the first.

Q. After having received his second signal, did you wait at all to see whether or not he was obeying it?

A. No, sir; because about that time we could see him swing rapidly as if acting on a port helm. I said to the Pilot, "What the devil is he doing?" and swung the telegraph "full speed astern."

Q. Did not the Pilot in answer to your question say immediately, "He has answered our signal; if he obeys it, it is all right?"

A. That was to the first signal. He said, "He has answered our signal; that is all right." It would have been if the ship had acted in accordance with it.

Q. After the first signal there was something that in-

icated to you that he was not starboarding, before you gave the second?

A. Certainly.

Q. Then you gave the second?

A. Then he gave the second.

Q. You received the answer to the first signal clear enough that he would starboard?

A. Perfectly clear.

Q. Did you sound any alarm at any time?

A. It was not necessary.

Q. I am not asking you if it was necessary. I am asking the fact?

A. We did not.

Q. Was there any signal of any kind from your ship that indicated to the "Chester" that you had given the order to go full speed astern?

A. It must have been very evident to anyone on the lookout on the "Chester" that the "Oceanic's" propeller was going full speed astern. Any seaman would notice it at once.

Q. Is there not a rule of signals by which one ship can signal to another that she is going astern?

A. There is.

Q. What is it?

A. Three blasts of the whistle.

Q. You gave no such signal as that?

A. No, sir.

Q. You did not give any signal of five or six sharp toots of the whistle as a danger signal?

A. We did not give that because it might have been confusing. We had no occasion to give it. We were ex-

actly according to our signals. If there was any danger, it ought to have come from the "Chester;" that is the ship that ought to have given the danger signals, indicating to me that he was unable to act on the understanding we had arrived at, that the helm should be starboarded.

Q. You saw he was not complying with it?

A. Exactly. The moment we saw it, we took every precaution to prevent any accident.

Q. You heard his signal agreeing with you to go to starboard, and at the same time that your hearing indicated that he would go to starboard, your sight indicated that he was going to port, did it not?

A. After the first signal he did nothing. The ship seemed to come straight ahead, therefore, we repeated the signal.

Q. Notwithstanding his signal that reached your ears that he would go to starboard, the sight you had of the vessel which was immediately almost, was it not—

The Court — I presume you want to be understood in the proper way. He was not going to starboard.

Mr. White—Q. The sighted indicated to you he was not going to starboard?

A. After the first signal the sight indicated he was not; therefore, we repeated the signal to see that he understood.

Q. After the second?

A. He repeated our signal to say he did understand.

Q. At the time of the second signal—the second signal was that he was going to starboard—the sight indicated to you he was not obeying the agreement?

A. As I have told you once or twice, directly the sec-

ond signal was given, that he appeared to be going on the port helm, which would certainly throw the ships together, and, therefore, I gave the order and put the helm full speed astern myself. There was no danger, or should have been none, if that ship answered her starboard helm. Directly we saw she was acting on her port helm, we put the engines full speed astern.

Q. How soon after the first signal from the "Chester" did you get sight of her?

A. I myself had sight of her when the first signal was given.

Q. What direction did she appear to be taking at the time?

A. I know she was coming in end on to us about two and a half to three points on our starboard bow.

Q. Off that way (pointing).

A. Off that way. We were never pointing at him at any time.

Q. While her signals indicated that she was going to starboard, the sighted of the vessel indicated that she was either going to come straight towards you, or later than that was going to port?

A. The sight indicated that he would run into us if he did not carry out the signal we gave him and which he answered.

Q. This difference between her signals which came to your ears and what you saw with your eyes created some confusion as to her intentions in your mind, did it not?

A. There was no confusion in my mind.

Q. Are you familiar with the rules adopted by the

Treasury Department of the United States Government for the steerage of vessels?

A. Yes, sir.

Q. Were you familiar with this rule at the time of the collision? "Rule 3.—If when steamers are approaching each other the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; and if the vessels shall have approached within a half a mile of each other both shall immediately be slowed to a speed barely sufficient for steerage way until the proper signals are given, answered and understood, or until the vessels shall have passed each other."

A. I believe that is the rule.

Q. I will ask you why it was, when the signals indicated that the "Chester" would pass to starboard and her position and motion and direction, as shown by your eye, indicated she was not obeying that order, why did you not immediately signify the matter by giving several short and rapid blasts of the steam whistle?

Mr. Barnes—I object to the question, because it is not founded on the rule at all, nor is it applicable to the facts. That is a rule directed to control the action of pilots or persons in charge of ships when there is a misunderstanding. There was no misunderstanding here. The first time they signalled, they gave the two blasts. They were answered by the two blasts. She got in sight, and they saw she was not doing what she said she would do. They repeated the signal and it was answered, as I understood

Therefore there was no confusion, and the rule does not apply. The question asked does not cover any single fact as developed by the testimony.

The Court— That is the testimony of Mr. Meyer. Mr. Meyer testified that there was no misunderstanding.

Mr. Barnes—The captain himself has just so stated. The rule interrogated of by counsel has no application.

The Court—I do not think that on the testimony as it now stands the question can be predicated on his statement.

The objection is sustained.

An adjournment is here taken until to-morrow morning, Friday, September 8th, 1893, at 10 o'clock.

TUESDAY, September 12, 1893.

JOHN METCALFE. Recalled.

Mr. White—Q. Captain, was there any uncertainty in your mind as to the intention of the "Chester" from the time you sounded your first signal to her and received your reply, up to the time of the collision?

A. Not until after the second two whistles had been blown.

Q. How was it after the second two whistles had been blown from your ship?

A. Well, the "City of Chester" seemed to be acting on her port helm instead of her starboard helm, as his answer to our signal led us to believe he would do.

Q. Was there any uncertainty in your mind as to the

course of the "Chester" from the time of your first signal to her and her answer, up to the time of the collision?

A. After our first signal to starboard was answered by him, naturally, we had no idea of any uncertainty at all. I simply thought he would starboard his helm as he intended to do, as the signal conveyed the idea to us, and he would pass along clear of us.

Q. Your answer now, as I understand it, applies to the intention as indicated by her signals?

A. Naturally.

Q. As to the course that the "Chester" actually was taking, was there any uncertainty in your mind as to what she was doing, or intended to do?

A. As I before stated, not until after the second signal was given.

Q. How far apart were the two ships at the time the first signal was given and answered?

A. About half a mile.

Q. And at that time could you and did you see which way the "Chester" was headed?

A. She was heading right for us, straight; all masts and funnel in line. If anything, we could see probably a little more on the starboard bow.

Q. If you were to indicate what courses the ships were taking, would you say they were head on, or on crossing courses at that time?

A. I should say she was on our starboard bow. She was end on us. We were never at any time end on to her.

The Court—Q. Did you say you could see more of her starboard bow than you could see of her port bow?

A. I think so, probably a little more, but very little.

She was so nearly end on that you might call it end on.

Mr. White.—Q. She was on your starboard bow ?

A. Yes, sir.

Q. And end on towards you ?

A. Heading right for our bridge, apparently.

Mr. Barnes—Q. Won't you take those two models and give the Court an idea of the general position that she occupied ?

A. That is about the line (illustrating), so that I, looking from this bridge, could see the ship end on—perhaps a little more on this bow than the other. It might be called end on.

Mr. White—Q. So that if the lines of the apparent course of the ship at the time you first saw her had been produced, they would have crossed each other.

A. Yes, sir ; that is, if the line of the course of the “City of Chester” had been carried along and prolonged, it would have crossed the “Oceanic” somewhere about the funnel or the bridge ; the line of the course of the “Oceanic” being prolonged would never have touched the “City of Chester.”

Q. It would not be necessary to prolong the line of the course of the “Oceanic” at all in order to produce the crossing effect ?

A. No, sir, it would not ; not to produce the crossing effect. The only line to be prolonged would be the course of the “City of Chester.”

Q. Did you know what steamer that was at the time ?

A. I had no idea ; no, sir.

Q. All you knew about that was that the pilot had told you some steamer would come out ?

A. He told me some steamer would leave Broadway wharf at about nine o'clock in the morning.

Q. How much time relapsed, as nearly as you can tell, between your first and second signals to the "Chester" to starboard the helm?

A. Probably two minutes, as near as my memory will serve now.

Q. I will ask you whether there was any way that you could have avoided the collision if the steamer "Chester" had kept what was her apparent course at the time that you first saw her?

A. If she had maintained the course she was steering when we first saw her, the chances are, that if we had gone full speed ahead, we might have crossed her bow.

Q. How would it have been if you had gone at dead slow, the same as you were going?

A. Well, the chances are then she might have hit us somewhere about the after end of the ship, but still, that is only a supposition on my part. I do not know. She might have cleared the ship.

Q. Suppose she had kept her apparent course of head on toward you, or had turned as she did on her starboard; and you had at the first signal gone full speed astern, what would probably have been the result?

A. The first signal of the two whistles?

Q. Yes.

A. I do not know what would have been the result at all, because that is simply an impossibility to do. When I give a signal that I wish to pass the starboard side, I do not propose to go full speed astern or do any such un-seamanlike act.

Q. I will ask you the question again. What in your judgment would have been the result if she had kept the course that she actually did keep, making the turn as she actually did, and you had given the order, and the order had been obeyed to keep your ship full speed astern at the time the first two signals were sounded. Would there or not have been any collision?

A. I cannot say.

Q. You testified on Thursday that you knew it was flood tide at that time. I want to ask you now whether you were familiar enough with the tides to know that at flood tide the tide strikes strongly here on the south shore off from Fort Point, and is then deflected, so that it carries quite a strong tide or strong current from the direction of Fort Point across towards Lime Point; you knew that, did you?

A. I know that the flood tide in making in; makes in on the south shore, and strikes the land just outside of Fort Point, and is deflected in line with that land towards Lime Point, and runs across the channel a certain distance, and then takes the same course as the true tide coming in amidchannel and north.

Q. You knew then, at the time of that flood tide, there is a cross-current to some extent across the channel there caused by the tide?

A. To some extent across the channel, yes.

Q. The current running from the south or Fort Point side over towards the north side?

A. Over towards Lime Point; nearly due north.

Q. Of course you knew, Captain, that any vessel cross-

ing that current at an angle would be influenced to some extent in her course by the tide ?

Mr. Barnes—I desire to make the point here, and take the ruling of the Court upon it, because I do not desire the evidence to even be submitted without an objection. I object to this query as to the tides, upon the ground that it is wholly immaterial. I do so upon authority. So far as respects danger to vessels at anchor, the speed of the other ship over the ground, and the condition of the tide, and not its speed through the water, are to be considered, and in all cases where one ship is at anchor and the other at motion, the strength and the direction of the tide must be taken into account, but where both vessels are in motion, neither at anchor, the question of tide becomes wholly immaterial.

The Court—Without regard to whether the motion is—

Mr. Barnes (interrupting)—Accelerated or diminished. That is upon the very highest authority. I call your Honor's attention to Marsden on Collisions at Sea, page 352, and the cases there cited. That rule has been followed in all the English maritime cases, and in our own. The argument upon which the rule is founded, is quite obvious, I think. The tide becomes immaterial, because both vessels are at liberty; both are under command, both are supposed to know, and the one ship is not more responsible for the condition of the tide than the other. Apply the rule to this case. Of course, as far as a landsman can penetrate into the views of a master mariner, like my friend on the other side of this case, it is somewhat apparent that his object by this series of questions is to show that with the young tide there was a strong set against

the south shore deflecting the volume of water towards the center of the channel between Lime Point and Fort Point, and then carrying it away; that he knew, we will say, or ought to have known, that when the nose of the "Chester" was poked out from behind Fort Point, she would strike that current, and would be, *volens volens*, rudder to the contrary, notwithstanding, swept away to the starboard, or swept to the right or the left, as the force of the current might take her in going in or out, and that that was something he ought to have calculated for. I say, if there is anything in the question it is that. The argument is applied right the other way. The "City of Chester" was in that tideway, and the "Oceanic" was not. The extent or the force of it operating upon the "City of Chester" was that which those in command of the "Chester" knew or ought to have known. It was not for a man half a mile away on the other side of the entrance to the harbor, proceeding in his vessel according to the rules of navigation, to know or to understand, that the "Chester" was, or might become, unmanageable by reason of the tideway. That goes back again to still another proposition, and that is that in estimating the risk of collision, the "Oceanic" was not bound to take into account or consider at all the ability or inability of the "City of Chester" to mind her helm, or to do what her thinking part, her Captain, agreed she should do. Those possibilities are upon well-established authority, and one case in which it is very thoroughly raised, is the case of the "Nichols," in the 7th Wallace, where that rule is laid down on a long course of authority; that in those propositions of navigation it is not a possibility, as applied to this case, that the Captain of the "Oceanic" ought to

have calculated upon when he gave a signal to starboard the helm, or send his ship off to the left, and he was doing it, to calculate that possibility the "City of Chester" that had heard his signal, that he was going to the left, and had answered that it would go to the left, thereby each passing on the starboard side, it was not for him, I say, to calculate the possibility that either from defective condition of the helm, or the steering apparatus or tideway, or anything else which might affect a vessel in motion, could happen, so as to bring about a collision. All those circumstances are not circumstances when vessels are in motion, that are to be taken into consideration. For that reason I object to this inquiry as to the tide, because it was a tide in which the "Oceanic" was not moving. The disaster could in no sense be traced to anything that happened to the "Oceanic" by reason of the tideway. If it happened to anyone, it happened to the "Chester," and, therefore, became *pro hac vice* actually and utterly immaterial.

The Court—What have you to say to that Mr. White?

Mr. White—In listening to the argument of counsel I have been in doubt as to whether he advances this proposition as one of law or one of fact.

The Court—He refers to a case decided in the 7th Wallace, wherein the matter is discussed, and I judge from his statement of the case, would be one of both law and fact.

Mr. White—From my examination of the authorities, and I have quite a collection of them here, I find there is once in a while a case that signifies something in the direction of his contention, but by far the majority of the cases are directly to the contrary. The rules of navigation to

prevent collisions are, that one vessel has no right to adopt a particular course for herself and rely upon the other one doing everything that can be done to keep out of the way. In other words, it was the duty of the "Oceanic," as I shall contend, and I can furnish the best of authorities for that proposition, both English and American—it was the duty of the "Oceanic" and her officers to know the condition of that tide and to reasonably know that under the rules of navigation any vessel whatever, and particularly a small vessel like the "Chester," being caught in the tide would sheer off and be carried away by that tide to some extent, and to make allowance for it. An exaggerated case is permissible by way of illustration. Suppose the fact to have been here that this tide set up so strongly across here as to strike hard against that north shore, so hard that it was next to impossible for any vessel to go in and out there on account of having to fight out against this side drift that this strong cutting across there would give it, so that they had to use their entire steam power and had to fight directly south against the tide in order to get out. The general's contention is that the "Oceanic" coming in here, and knowing well that fact, and knowing that whatever vessel came out here and struck that tide would be carried off there in spite of all she could do if she had the strongest of engines and the strongest and most approved machinery in every respect; in spite of all that could be done, the condition of that channel was such that the 'Chester' or any other vessel would be carried across there within 10 or 15 rods of the north shore, yet his contention is that they do not have to pay any attention to that whatever; that they can insist that the "Ches-

ter" shall go on a straight course through the tide, when it is an impossibility, and that they can frame their course accordingly. I do not claim that the condition of affairs is actually such an exaggerated condition as that. I do claim that all the authorities show that it is the duty of expert mariners to know at the ports they are coming in the condition of the tides and to know the condition of that harbor and that port and to make the proper allowance, in attempting to pass another vessel, for the influence that the tide would have upon her.

The Court—The difficulty about your position is this, that the "Chester" signalled that it would go to the starboard; that it would take the "Oceanic" on its right, the "Chester" passing to the left of the "Oceanic" going out. That signal was made by the "Chester," and, presumably, in view of all the contingencies that were operating on the "Chester," its own ability to obey its helm, its steam power, the power of the propeller, and with a knowledge on the part of the officers of the "Chester" as to the condition of this tideway. Here is a vessel that is going out to sea. It is going against a tide coming in. The "Oceanic" is coming from sea, and coming in on the young flood. There are, perhaps, some cases which go to the extent of holding that a vessel coming into port on a flood tide is required to be careful, and to use all precautions that can be observed for the safety of the vessel, but the point in this case is that the "Chester" had signalled, giving the two blasts of the whistle indicating the position that it would take with respect to its departure from port. Now, then, the master of the "Oceanic" accepted that signal and governed its operations or its movements accordingly. In

view of that, it is relevant for us to consider the condition of the tide for the purpose of determining the conduct of the officers of the "Oceanic." It is very material probably for the purpose of determining the conduct of the "Chester."

Mr. White—What your Honor says would be pertinent to a case pending between the "Chester" and the "Oceanic," to determine which of them were to blame, but no negligence can be imputed to the passengers on the "Chester," even if the "Chester" was negligent. That is not a question between the two ships of comparative negligence. That is held universally to be the rule. If one ship is grossly and criminally negligent in her management, and the other, as the English authorities express it, is guilty of a venial fault and one that could be easily forgiven, the rule is to hold both of them responsible. It was held in the case of the "John H. May," in the 52d Federal Reporter, 882, and also in the "Intrepid," 48th Federal Reporter, 327, that it would be inexcusable negligence for the owner of a steamer not to be acquainted with the state of the tide.

The Court—Which was it in that case, his ship or another ship?

Mr. White—That was his ship. In the case of the Gloucester Ferry Company *vs.* The "Rescue," a case from the Eastern District of Pennsylvania, it was held that a steamer approaching a wharf, was bound to notice the visible effect of a tide on another steamer coming out from the wharf, and they were both in motion, one going in and another coming out. The incoming vessel was held responsible.

The Court—That was a very different matter from the law of the road. What we are called upon to examine in his case is, what is called the law of the road.

Mr. White—The law of the road will not permit one to take the left hand side of the road when he knows there is an impassable mudhole or rock that one on the other side is necessarily bound to go round. In other words, the rule is, that both parties must make such allowance and give such broad road to the other that there will not be any collision in any event.

The Court—This probably may be a vital point in this case. The Court is willing to take it now and strike it out hereafter upon argument, or hear the argument now fully, whichever will be the most convenient.

Mr. Barnes—I presume you might take the course that your Honor's distinguished and deeply regretted predecessor was in the habit of taking in cases of this character. He would say, "Well, I am sitting here by myself, and if I should be satisfied that I had made a mistake, if I ruled out this testimony, it would be irremediable mischief; if I am satisfied it ought not to be entertained, you know very well I will not entertain it." At the same time he always insisted, and I think that seems to be the general drift of the broad principles upon which these admiralty cases are universally heard, that whenever a question of this kind comes up, the counsel shall state the point, and the Court then takes it subject to the objection, and to consider more deliberately than would be possible if he had a jury in these cases, whether it ought to be given any weight or not. For that reason I called your Honor's attention to it. Sub-

ject to that proviso, I see no reason why it should not be permitted to be stated.

The Court—I think that will do. The case might turn on some other point, and the time of argument would be pursued uselessly.

Mr. Barnes—That is without waiving the position for which we contend, that the moment the signal given by the “Oceanic” was understood and answered by the “Chester,” when they were at sufficient distance to have passed starboard to starboard, and without any danger, if the “Chester” had been manageable in that tideway, that that relieves us from any consequence of a disaster happening by reason of the “Chester” getting in a tideway that swept her across that channel and into us. That is the proposition.

The Court—Then the objection of General Barnes to this testimony will be overruled, subject, however, to further consideration in this matter hereafter.

Mr. Barnes—Either by counsel on a motion to strike it out, or the Court itself, when it comes to consider the case.

Mr. White—Whichever way the ruling finally goes, the other party will be entitled to an exception.

The Court—Yes.

Mr. White—Read the question, Mr. Reporter.

(The reporter reads the question as follows: “Q. Of course you knew, Captain, that any vessel crossing that current at an angle, would be influenced to some extent in her course, by the tide?”

A. It would all depend upon the position of the other ship as to that particular tide.

Q. Will not a ship crossing not at right angles, but at an acute or obtuse angle cross a strong current, be carried off from her course to some extent by that current?

A. Not unless she is going from still water into a cross-current. If she is in the cross-current all the time it cannot interfere with her steering.

Q. Supposing the current out of which the "Chester" had come before she entered this current caused by the tide, and goes off to the north, had been a current going to the south, would she not have been influenced in her direction by entering this current that goes to the north?

A. If she is in a current completely setting to the south, her general set would be to the south. It would not necessarily interfere with her steering. As I said before, if she went from comparatively still water into a cross-current, her course would be influenced by the set of the tide that she was going into.

Q. Suppose she goes from a current setting to the south probably into one setting strongly to the north, would she not be interfered in her course by this?

A. Certainly.

Q. If she goes from a still water into one setting strongly either way, she would be influenced by it?

A. Certainly.

Q. You say you knew that this current set strongly across here from Fort Point at the state of the tide, over towards mid-channel?

A. Somewhere in that direction, yes.

Q. In the direction of mid-channel? Did you make any allowance in your arrangements for passing the "Chester," for the sheer that this tide would give her?

A. I most certainly did not, because I did not know the position of the "City of Chester" with reference to that tide. It would be absurd for me to make any possible arrangements for her navigation, when I could not tell her position with respect to that tide. If the Captain of the "Chester" was satisfied that that tide would prevent him acting on his starboard helm, it was his duty to signify that to me by the danger signal or going astern, and I would have done the same.

Q. You relied upon the "Chester" entirely on that question?

A. I relied upon the seamanship of the Captain of the "City of Chester" carrying out the whistle signal that we had each given and answered.

Q. You could see Lime Point quite plainly at that time?

A. No, not quite plainly; I could distinguish the white signal house.

You had seen Point Diablo quite plainly?

A. I had seen Point Diablo quite plainly.

Q. You knew almost to a certainty what her position was?

A. I knew from the position pretty nearly.

Q. You knew from the direction of your vessel being northeast, half east, exactly what direction you were heading?

A. Yes, sir.

Q. You knew almost to a certainty the direction you were from Fort Point?

A. Yes, sir.

Q. And from this shore outside of Fort Point?

A. Naturally, I knew where Fort Point ought to be.

Q. As soon as you saw the "Chester," you knew almost to a certainty what her position was in the channel?

A. Allowing her to be a half mile on my starboard bow, I knew pretty well where she was; yes.

Q. Putting all this information with your knowledge of the direction that this tide ran, did you not know that the "Chester" would be caught in the tide?

A. Assuming that the position of the "Chester" to be half a mile from me on my starboard bow when the first signal was given, she was not within the influence of that tide rip, in the neighborhood of Fort Point. If her helm had been starboarded then, which is usually done by every steamer going out of the port on flood tide in order to make that rip, she would have recovered herself very quickly, and gone on about her business.

Q. I will ask you if you can, in answering my question, to refrain from stating what the "Chester" ought to have done?

The Court—You called for that.

The Witness—You are asking me what the "Chester" was doing, and what the ideas of her Captain were, and I cannot tell them.

Mr. White—Q. I am asking you about where you were and what you knew about the situation?

The Court—I think he is answering your question, Mr. White.

Mr. White—Q. In steering the "Oceanic" and making arrangements to pass the "Chester," did you make any allowance whatever for the sheer of the "Chester"?

caused by this tide, running from Fort Point up to Lime Point ?

A. No, sir ; I do not think I did.

Q. You knew it ran there ?

A. Yes, sir. I did not know the "City of Chester" was in it.

Q. You knew the "Chester" would have to pass through it ?

A. Sooner or later, but what time I could not tell.

Q. You knew the position of the "Chester" at the time you first saw her ?

A. Mr. White, I could not estimate the position of the "Chester" so closely as to tell when she would cross that particular rip. That tide sets across there in a distinct line. It was impossible for me to look out for my ship and my navigation, and watching the "Chester" to tell when she was approaching that line with sufficient certainty to base my own action on it.

Q. Did you give the matter of the "Chester" being caught in that tide any consideration whatever ?

A. I do not think I did. I left that to the Captain of the "Chester."

Q. I understood you say, Thursday, that to have sounded the danger signal would have caused confusion. I will ask you now, if you had sounded the danger signal, would not your crew have been better prepared to have got out their boats more promptly than they were ?

A. Not any better prepared.

Q. Would they not have been more on the alert ?

A. Not any more on the alert.

Q. If you had sounded a danger signal ?

A. The danger signal is not a signal to get out the boats on the "Oceanic," or any other ship at sea, that I know of.

Q. Then your crew would not have been waked up by a danger signal being sounded?

A. They did not require any waking up; they were wide awake.

Q. What kind of a crew did you have?

A. A mixed crew.

Q. What were they?

A. Europeans and Chinese.

Q. About how many of each race?

A. I do not remember the exact number on that voyage. I think probably 70 Chinese and about 35 or 40 white people.

Q. What position did the white men have?

A. Officers.

Q. The common sailors of your crew were all Chinese?

A. All Chinese.

Q. If you had sounded a danger signal at the time you first noticed that the "Chester" did not appear to be minding her helm, would that not have been a warning to the crew of the "Chester," so that they could have got out their boats earlier?

A. I doubt it very much.

Q. Why?

A. Because, as I have before stated, the danger signal is not a signal to any crew of any ship that ever I heard of, to attend to boats or anything else.

Q. Is not the danger signal one that the crew all understand?

A. It is very questionable. It is only a danger signal between the two captains. It is an intimation of lookout.

The Court—Q. It is a signal that relates to navigation?

A. It is a signal that relates to navigation, and it is understood by the two masters of the ships, and probably the officers, but not as a rule by the crew.

Mr. White—Q. It is a signal that is intended to convey the idea, that unless very prompt measures are taken one or both ships may go to the bottom, or some other thing?

A. No, sir; excuse me—

Mr. Barnes—I object to that question. Mr. White is not testifying. If he wants to know what a danger signal is, let the old salt stand back and the landsman speak.

The Court—I sustain the objection.

Mr. White—We except.

The Court—You understand what the objection is, Mr. White. You can ask the witness what a danger signal is.

Mr. White—He has already given that.

The Court—General Barnes insists that you shall not inform the witness what a danger signal is—an put that in the record as testimony.

Mr. White—Will you give me the dimensions of the “Oceanic,” if you can?

A. 438 feet long, by 40 feet 9 inches wide, 29 feet deep.

Q. How long were you her captain?

A. Twelve years.

Q. Do you know upon what radius she would turn so as to go the other way, in smooth water, when going at full speed?

A. We have never tried it.

Q. Without attempting to give absolutely an accurate answer, tell us about how much water was required to turn the "Oceanic?"

A. Going at full speed?

Q. Going at full speed.

A. Certainly not less than a mile.

Q. It took a mile of water for her to turn round?

A. Yes, sir; to turn completely around; that is approximately as far as I can judge.

The Court—Q. Is that the diameter or the circumference of the circle?

A. The diameter.

Q. The vessel at the time describing about three miles of a circle.

A. Running around about three miles of a circle.

Mr. White—Q. I ask you the radius on which she turned taken from a circle which I understand would be 2500 or 2600 feet?

A. Half a mile.

Q. About how many times did you bring the "Oceanic" in and out of the harbor of San Francisco?

Mr. Barnes—Do you mean prior to this time?

Mr. White—Prior to this time, yes.

A. About 40 to 50 times; I don't remember now.

Q. When did you leave the "Oceanic"?

A. In 1889.

Q. What business are you now engaged in?

A. Surveyor to Lloyd's Register of British and Foreign shipping.

Q. What time in 1889 did you leave her?

A. June, I think.

CROSS-EXAMINATION.

Mr. Barnes—Q. How long have you been going to sea, captain?

A. Up to the time I left the "Oceanic," 28 years.

Q. Do you hold a master's certificate?

A. Yes, sir.

Q. How long have you held it?

A. Since 1867 or 1868; I am not sure which.

Q. At the time of this accident, the 22d of August, 1888, how long had you been in command of the steamship "Oceanic"?

A. About 11 years, I think; 11 or 12; one or the other.

Q. Before you were master of her, had you occupied any other position with respect to her.?

A. None.

Q. Then from first to last you were her commander?

A. From first to last.

Q. During the time you were on board of her had she made any other voyages than those between this port and the Asiatic ports?

A. Yes, sir; from this port to England via China and back.

Q. Were you in command of her on that expedition?

A. I was in command of her.

Q. What was her tonnage?

A. 3,808 close tonnage.

Q. What was her length?

A. 438 feet.

Q. Beam?

A. 40 foot, 9.

Q. Draught?

A. Down to her marks, 25 feet.

Q. When you say "down to her marks," what do you mean by that?

A. I mean down to the draught of water and freeboard that Lloyd's rules would allow her to go.

Q. And that was indicated upon the side of the ship at this time. How many passengers did you have on board of the ship of one kind and another?

A. I am not sure; but somewhere in the neighborhood of 1000.

Q. What was her complement, with reference to crew, sufficient?

A. Ample in every way.

Mr. Barnes—I am asking these questions, if your Honor please, because I do not know, except as we are able to get at it, what it is the plaintiff here complains of. There is a general sweeping allegation in the libel as to the ship and her management, but in default of that we are obliged to go over a broader ground than I otherwise would, or if the counsel would state even now what it is he relies upon in the way of either defective handling or crew, or any other thing which was the approximate cause of this disaster, in the way of negligence for which we are responsible, we should be glad.

The Court—I infer from his statement, and what he said a moment ago, that his claim is that notwithstanding it may be assumed that the “Chester” was at fault, perhaps grossly at fault, if the “Oceanic” was at fault, even in the smallest degree in this collision, that then these people who were killed or drowned have a recourse against the “Oceanic” for whatever negligence or bad conduct was to be attributed to that vessel. That being the case, I should imagine that it will devolve upon you at some time or the other in the course of this defense, perhaps not now in cross-examination, but at some time or other, to meet all these issues. Is not that correct, Mr. White?

Mr. White—Yes, sir. My position is this: These two vessels, as compared with each other, may take any one of four positions. Both may have been perfectly free from blame, in which event the defendants would be entitled to a judgment. The “Oceanic” may have been free from blame and the “Chester” blameful, in which event the “Chester” only could be held.

The Court—And the “Oceanic” go free?

Mr. White—And *vice versa* if it was the other way, or they may both be at fault, or in which case the “Oceanic” may be held. One of those positions may be eliminated entirely from this, because a collision like that cannot occur out there on a morning when the water is as smooth as glass and with a light and variable fog, and both of those ships be blameless. That part can be eliminated; if I can show that either or both of these ships were in fault, or that the “Oceanic” was in fault, I claim to be entitled to a judgment for the Plaintiff.

The Court—That will involve a defense on their part

that the vessel was suitably equipped in every respect and every particular and every detail, and so equipped as to be provided for every emergency that did arise on that morning, and that everything was done by that vessel that was proper and necessary to be done in view of the situation.

Mr. White—We may eliminate from that the question of the equipment of the “Oceanic,” with perhaps the exception whether she had a proper and sufficient crew; that her appointments were sufficient, her steering apparatus and everything of that kind was of modern kind and reasonably the best, I make no question. I stopped the cross-examination upon that point the other day, saying I made no question on that point.

The Court—I will not discuss the matter any further; I was simply trying to find out what the issues were. As I understand, then, you make no point on the equipment of the vessel so far as the power of her engines and her steam power is concerned?

Mr. White—Nothing of that kind.

The Court—Nor the propeller?

Mr. White—No, sir; her steering apparatus and all her mechanical appointments were sufficient so far as I know.

Mr. Barnes—We are still as far from a comprehension of the matter, so far as the statement of counsel is concerned, as we were when we began this desultory talk. It is conceded now, as I understand, that everything was right about the “Oceanic” except, perhaps, her crew. What counsel means by that I do not know. It certainly is not claimed or pretended that because there were a proportion of Asiatics on board this ship employed as seamen

or in the different departments of the vessel that that employment was attributable at all to this collision; that cannot be claimed. I do not suppose it is, nor do I suppose there is anything in the Chinese portion of this proposition that would be of any effect or influence with any court than one over which the Honorable Dennis Kearney might preside. There it would be of some use perhaps. But here, I take it, it is of no force whatever. Then it comes down to some question of negligence or wrong doing in navigation purely and simply. I say, we bring this case to a point, and try it on that point, if the counsel will say what he claims we did that we ought not to do and what he claims we did not do that we should have done. If we can bring the case down to that point, all the rest of this matter becomes actually immaterial; and I think it will be for the advantage of both sides. If the proposition of counsel is, as he would seem to indicate, that it was the duty of the captain of the "Oceanic"—I say the "Oceanic" because I concede that the negligence of the "Chester," or those in command of her, cuts no figure whatever in this case; that she may have been ever so wrong, the negligence, if there was any, which I do not claim, on the part of the "City of Chester," is not to be imputed in the language of the law to the passengers on board the "Chester," though it might be imputed to the owners of the "Chester" if they were conducting a proceeding against the "Oceanic" for damages resulting from the collision; but so far as these plaintiffs are concerned, no matter what mistake, error or fault there was in the navigation of the "Chester," it is not to be imputed to the passengers or people who had life or property on board that ship. That proposition is beyond

any dispute; but the case must turn not on the fact that a collision occurred, but that the "Oceanic" did something which it ought not to have done or omitted to do something which it ought to have done. Is it not the fairest way for the counsel to say, "I intend to claim in this case that when the first signal to go to the left was given by the "Oceanic" she had no business to proceed at all, she ought to have stopped right there." Then we have got to a problem that has to be worked out. If his position is, that when the second signal was given we did not go full speed astern as quick as we ought to have done, or that our duty was, when we had given one signal, to do something other than that which the signal said we would do, and which it was understood we would do, why then have we got a proposition to discuss. What the use of beating all round the bush is, is a puzzle to me, and is not in accordance with the ordinary method of trying these cases. I say if counsel will say what it is he finds fault with, we can go straight to that proposition, and try this case in a week instead of five.

The Court—The new rules prescribe for the trial of collision cases in the southern district of New York, provide for the development of an issue such as General Barnes has described. Mr. White, if you are prepared to state your position, it might somewhat shorten the proceedings.

Mr. White—I suggest it would be better to finish the cross-examination of this witness before we do anything of that kind.

The Court—Proceed, General.

Mr. Barnes—Q. How was the crew as to seamanship and ability to handle that vessel under your orders?

A. Excellent.

Q. Was there anything in the circumstance that a portion of the crew belonged to one of the shaded races of Asia that made them less competent than men of any other race to do what was necessary to navigate that ship?

A. After a great number of year's experience I found the Chinese the best sailors I ever had on board of a ship for any purpose whatever.

Q. Were the men on board this ship competent navigators and handlers of that vessel under your orders?

A. Perfectly competent seamen in every way.

Q. How were the different portions of the ship which related to her handling, as to their being in good order or the reverse?

A. Very good order.

Q. What were the steering qualities?

A. Very good indeed.

Q. Was she in as good a condition and capacity to be steered and handled as any ship of her size and class?

A. A better steering ship than any afloat, I believe, of her size.

Q. Do you know the value of such a steamer as that?

A. Approximately, yes.

Q. How much?

A. Well, the ship cost £125,000 when she was new.

Q. That would be how much in real American money, not silver?

A. About \$800,000, gold.

Q. Did she have a cargo aboard at that time?

A. A very valuable cargo.

Q. Can you state to the Judge, approximately, what

the value of the cargo you had on board at that time was ?

A. Not less than \$1,000,000.

Q. And passengers about 1,000.

A. As near as my memory carries me, about 1,000.

Q. Were you acquainted with the rules provided by the laws of the United States for the government of steamers and vessels proceeding in fog in coming into harbor or roadsteads ?

A. Yes, sir.

Q. What did you do in compliance with those rules from the time you approached, say, Point Bonita ?

A. We kept the whistle going at intervals of about half a moment, and in the neighborhood of Point Bonita placed the ship at dead slow.

Q. What do you mean by the term of "dead slow" ?

A. It means on board of the "Oceanic," and most of the ships of the Occidental & Oriental Steamship Company, a speed that will just enable the engines to be turned over and give the ship steerage way.

Q. When you say "dead slow," you mean speed sufficient to subject the vessel to the command of her helm and nothing more ?

A. Just sufficient for that.

Q. How long prior to this collision had she been proceeding at dead slow, say, with reference to Point Bonita ?

A. It would be a difficult thing to state the precise time that she had been going dead slow, because the engines had been worked in accordance with the state of the weather. They had been going from half speed, slow, dead slow, and stopped, as occasion required.

Q. What was the cause of the change in speed in the degrees you mentioned?

A. The varying degrees of thickness of the fog.

Q. When it was light and you could see, you let her go a little faster?

A. Yes, sir.

Q. When the fog settled down you slowed her or stopped her or made her go dead slow, just as the occasion demanded?

A. Just as the occasion demanded.

Q. When you first signaled the "Chester," you gave signals indicating that you intended to go to the left?

A. Yes, sir.

Q. She answered that signal, as I understand, in a way that said to you in marine parlance, "I am going to my left." If that signal had been obeyed, will you show the Court how those vessels would have passed one another, what side—to what side?

A. Coming this way, they would have gone this way past each other (illustrating.)

Q. If at the time the first signal to go to the left was given and responded to by the "City of Chester," she had gone to the left and you had gone to the left, or kept on your course, was there then the slightest degree or possibility of a collision between those vessels?

A. Not any. The "City of Chester," if she had altered her course to the left one point, would never have touched the "Oceanic."

Q. When the second signal was given to go to the left, if she had then—after responding to your signal that she would go to the left—had in point of fact gone to the left,

would there have been any collision possible between those ships?

A. None, sir.

Q. I understand you to say, that immediately upon (perceiving) that notwithstanding she had understood both your signals and responded to both signals, she was still not going to the left, but was continuing to the right, what did you do?

A. Put the engines full speed astern.

Q. Between the time that you discovered that she was not doing what she had agreed to do, and your sending your ship full speed astern, how much time elapsed?

A. Not more than a half a moment. Less.

Q. Was it any more time than was necessary to enable yourself and Pilot Meyer to locate and recognize the fact that she was not doing as she had agreed to do?

A. Just sufficient time, in our judgment, to see that the ship was doing exactly opposite to what she had agreed to do. The only course then, was to go full speed astern.

Q. When the ships came in contact, did you see how the "Chester" came aboard of you?

A. Not for certainty. I think I could place the ships about in the position they came together.

Q. Will you do that with those models?

A. I think, as near as I can remember, that is about the position of the ships when they came together (illustrating).

Q. Do you know what the size of the "Chester" was, as to her length?

A. I cannot tell.

Q. Do you know her tonnage?

A. I have no idea; about 1,100 or 1,200, I believe.

Q. Are you able to state whether those models are about in the proportion of those vessels?

A. I think that they are about in the proportion.

Mr. Barnes—I will state, as a matter of fact, that they are drawn to a scale and in proportion, and we shall be prepared, whenever it is necessary, to establish that fact. They were built under measurement, and are correct on a scale, both as to comparative size and everything else.

Q. After the accident, did you examine the "Oceanic" to see whereabouts she had been struck or damaged in the collision?

A. Yes, sir.

Q. How soon after the accident did you look at her?

A. I suppose about an hour.

Q. Where was she then?

A. At anchor off Black Point.

Q. Where was she injured, if at all?

A. On the starboard bow above the water line some distance; I do not remember exactly how far above the water line.

Q. Was there any injury done to her port bow?

A. None.

Q. Assuming now, that those ships came together, and that the only injury found on the "Oceanic" was an injury to the plates on the starboard bow at some distance above the water line, and no injury whatever had been done to her on the port side, what would that indicate to you with reference to the collision itself?

A. It would indicate that the "City of Chester" had run into the "Oceanic."

Q. What would have been the probable consequence if the "Oceanic" had run into the "City of Chester" ?

A. More than likely the damage would have been done on both bows of the "Oceanic."

Q. Captain, won't you please turn to that bromide print of the "Oceanic" on your left, and show the Judge where your officers were stationed on that morning coming into port ?

A. I was standing near that telegraph on the bridge. The pilot was amidships over the port hole over the wheel house. The second officer was attending to the whistling lanyard. The fourth officer was down at the door of the wheel-house noting the time of the alteration of courses, and watching that the helm was put in the way ordered from the bridge. The chief officer was standing forward here by the foretopmast stays. The carpenter was near to him then, and most of the chief officer's watch were on this whaleback just in the wake of the forestays. A quartermaster was stationed here just foreside of the foremast to keep a lookout and pass orders between the bridge and chief officer. The third officer was aft looking after the steering engine with a portion of his watch, in order to put the hand gear on if anything happened to the steering gear, which is always done on entering ports.

Q. How with reference to the crew ?

A. Their stations are forward here about the anchor ready for anchoring. A part of the crew was aft here. The quartermasters are on the quarter-deck here attending to passing the word along to either end of the ship.

The Court—Q. This is a steam steering gear ?

A. It is a steam steering gear that we use.

Q. And only one man at the wheel ?

A. One man at the wheel.

Mr. Barnes—Q. Under the observation of how many men was he ?

A. Three others. The second officer's watch stops in after end of the ship ready to put the hand steering gear on and steer her, if necessity calls for it.

Q. Was there any officer of that ship on that morning coming into port who had not his station, or was not at it ?

A. None ; they were all at their stations.

Q. How many men were forward on the whaleback with the first officer, approximately ?

A. About ten.

Q. What were they sent forward to do ? What was their business there ?

A. To carry out the instructions of the chief officer and keep a good lookout in foggy weather.

Q. That was the duty of every man forward there ?

A. At that particular time entering port, all hands forward were on the lookout both ahead and on each bow.

Q. When you signalled the "City of Chester" that you would go the left, did you put your helm starboard, so as to carry that promise into execution ?

A. The helm was put hard starboard at once.

Q. Won't you tell the Court more fully, in reply to the question of Mr. White, how many boats there were on the "Oceanic," how they were hung or carried, and what their position and condition was in coming into port that morning, with reference to facility and ease of lowering and handling in the water ?

A. There are two boats here in the way of the main-

stays, foreside of the mainmast; two boats just foreside of the funnel; two more just baft; two more just abaft that opposite the engine room skylight; two more opposite the No. 4 house, just before the jigger-mast, and two more on top of the after-wheelhouse. The two boats just foreside of the funnel are swung out on the davits ready for lowering at any time. As a rule these two boats opposite the engine room skylight are also swung out, and ready to lower at any time. These boats had been out that morning, but, in order to make the ship ready for going alongside the dock, they had been swung in, but were still in the tackle all ready. At the time, or just about the time, that the two ships came together, or a little before it, I gave orders to clear away the boats. The crew of these boats came there and lowered them down. The one on the starboard side, forward opposite the standard compass, was also lowered down, and these two boats were opposite the engine room skylight. The two small after boats were also cleared out, but never put in the water. Some two or three minutes before the "Chester" went down, this boat in charge of the second officer was under the "Oceanic" (pointing):

The Court—Q. You now refer to the forward boat?

A. Yes, sir; the boat just before the funnel, was in the water. I am not sure whether it was the boat before the funnel or the boat in wake of the mainstays but one or the other was in the water under the port bow. The corresponding boat opposite the funnel on the other side, and the one forward was down in the water, and alongside of the "City of Chester."

Mr. Barnes—Q. What facilities did you have in the

way of lowering these boats? What sort of falls or tackle to let them in the water?

A. Patent detachable falls. You lower the boat down so far, somewhere within a foot or two of the water, and then pull a lever, and the boat drops clear of everything.

Q. Is there any better method known for getting out rapidly and getting boats into the water than was employed on board the "Oceanic?"

A. Not seagoing ships.

Q. How many boats altogether were got out after the collision from your ship?

A. Five were in the water.

Q. How many people of the "Chester" were rescued by the men of your ship?

A. I do not remember exactly now, but I know in the third officer's boat there were about 32 people.

Q. Can you give us any idea how many came on board the "Oceanic" from the boats that were sent out, approximately?

A. Approximately, about fifty people.

Q. How many boats did the "Chester" have out?

A. She had one out.

Q. Was that boat, to your knowledge, lowered from the davits or did it float off when the ship went down?

A. Partly lowered by the davits, and floated as the ship was going down; floated sufficiently for them to unhook the tackle before she went down.

Q. That was the only boat she had out?

A. The only boat that was in the water by any help from the people on the "Chester."

Q. Do you know whether the boat so getting away from the "Chester" saved any lives?

A. Yes, sir; it had some people in the boat; I saw them going into the boat myself down by tackle falls. I believe they were transferred to one of the "Oceanic's" boats afterwards.

Q. Do you know what became of that solitary boat of the "Chester?"

A. I think that the Captain or one of the officers pulled in shore with it. I am not quite sure.

Q. Do you know of anything that was omitted to be done by those on board the "Oceanic," which, looking back at it now, you can see would have, under all the circumstances, prevented that collision?

A. I see nothing.

Q. Then, in summing up your testimony on this point, you had on the "Oceanic" just speed enough to subject her to the command of her helm when she was going at dead slow?

A. Yes, sir; just sufficient.

Q. That you had competent officers and lookouts stationed at proper positions on the ship?

A. At just exactly in the positions that are laid down by the owners.

Q. And that up to the time of the collision, you gave constantly the fog signals, within the limit of time prescribed by law?

A. Within the limit of time; yes, sir.

Q. How was it with reference to steam? You gave a signal that you would go to the left, though you were going slow and then dead slow. Did you have steam

enough on the "Oceanic" at that time to enable you to take her wherever you wanted to go ?

A. She was carrying the full legal pressure on the boilers all the time.

Q. Then her slowness of speed was not due because the steam was down ?

A. Not by any means.

Q. She had a full force of steam and was able to be handled with that in any way you desired ?

A. In any way we desired; a full force of steam.

Q. Had you known anything about the "City of Chester" before this day ?

A. Nothing,

Q. Ever been on board of her ?

A. Never.

Q. Did you know Captain Wallace ?

A. I never saw him before.

Q. Did you know anything about her or about her officers or crew or equipment, then you would know about any ship you met on the highways of the ocean ?

A. I had no knowledge of the ship whatever. I don't think I even knew there was such a ship in existence, to tell you the truth, at least on this side of the water. I know one on the other side of the Atlantic.

Q. Did it occur to you at all at the time you first signaled, or when you second signaled, that it was possible that a steamship could be sent to sea from dock at 9 o'clock in the morning that was not able to go out of this harbor without being flung about by the tide ?

A. Taking the general run of ships, they go out all right, so far as I know.

Q. Was there anything in your knowledge of navigation—I am asking you now on the theory that there is something in the proposition for which my friend is contending—that you were responsible for the tides and the steering way of the “City of Chester?” Was there anything that you knew about that ship or about the tides that would naturally call your attention to the circumstance that in encountering the young tide sweeping round Fort Point, she might be carried in a direction totally contrary to that in which she was attempting to be steered?

A. Nothing, whatever.

Q. Then, the proposition as to the tide and her ability to mind her helm, was not taken into consideration by you?

A. Naturally.

Q. Did you ever know a case where meeting a ship either at sea or in harbor you were obliged to calculate, in addition to what you were doing, the ability of the other ship to mind her helm, or be steered, and the intention of her Captain?

Mr. White—Objected to as irrelevant, incompetent, immaterial and not cross-examination.

The Court—I think that is so.

Mr. Barnes—I do not desire to take time in passing on this matter, but it is the very question that the counsel was insisting on putting to the Captain, as to what the condition of the tide was, what he knew about what the “City of Chester” might do and what the effect of the tide would be on her. He has asked all these questions. Now I ask him if he knows, or if he ever knew, of its being

taken into consideration anywhere in navigating ships, that the master of one ship calculated or guessed the ability of the other ship to steer in a tideway or out of it, or what the intention of the Captain was independent of his signals. Is not that proper.

The Court—I think the Court has got to infer from the testimony as to what was done.

Mr. Barnes—I submit to the ruling of the Court.

The Court—I shall sustain the objection.

Mr. Barnes—Q. You say at the time of the collision you were on the bridge. When did you go on the bridge that morning?

A. I would not be certain to the hour; somewhere about 4 o'clock in the morning.

Q. Had you been on the bridge constantly on the lookout from 4 o'clock in the morning down to the time when this collision occurred?

A. Constantly on the bridge.

Q. At what hour did the pilot come aboard?

A. In the neighborhood of 8 o'clock in the morning.

Q. About what point did you pick him up?

A. Off the whistling buoy.

Q. From the time he came on board up to the time of the collision, where was he?

A. On the bridge.

Q. Did he leave the bridge at all from the time he first came on board and mounted it until this collision?

A. Never.

Q. How well do you know Louis Meyer, the pilot?

A. I have known him for a number of years.

Q. Do you know what his reputation as a pilot is?

A. I think it is generally conceded the best.

Mr. White—I object to the question as not being cross-examination. I understand that Mr. Meyer holds a license as a pilot. The presumption is he was competent.

The Court—I think so.

Mr. Barnes—He has answered the question.

RE-DIRECT EXAMINATION.

Mr. White—Q. In placing these models to show the position of the two vessels when you first saw the “Chester,” I will ask if you do not give the Court by your position of them a wrong idea of their position? As I understand you, the vessels were about half a mile apart when you first saw them?

A. Yes, sir.

Q. And the “Oceanic” was 480 feet long?

A. 438.

Q. Then the position of the two vessels was that the “Chester” was about six ship’s lengths of the “Oceanic” distant from you?

A. About half a mile; that is six ship’s lengths.

Q. Then, instead of their being in that position, the position would be more truly represented if we put the “Oceanic” about here (illustrating)?

A. You would have to extend it further back yet. The extension of the proportion would be as to the length of the “Oceanic” and the distance between the two ships. You cannot get the relative proportion, because in putting this ship further off, you have still to establish the two and a half points on the starboard bow. She is not two and a half points on the starboard bow.

The Court—Q. Put it over there by the water tank.

A. That is somewhere about the length (illustrating.)

Q. Come and look at it from this point.

A. Turn the bow to the left, Mr. Barnes.

Mr. Barnes—Be good enough to address me in the language of your craft. Shall I starboard the helm, sir.

A. Yes; starboard it, please. That is about it.

Mr. White—Q. You think, comparing the size of these two models, that that would be about the relative position and distance of the ships?

A. Yes; when the first signal was given to starboard.

Q. As I understood you all through, the direction did not change substantially at the time of the second signal, that is, so far as the number of points were concerned?

A. Not a great deal; no, sir.

Q. The position was such at the time of the second signal as if the "Chester" had simply advanced along this line towards the "Oceanic"?

A. Yes, sir.

Q. How far back on the "Oceanic," on the starboard bow of the "Oceanic," were these marks of the collision?

A. 2 or 3 feet; I think they extended from the stem, 4 or 5 feet abaft the stem.

Q. About 4 or 5 feet from her stem, abaft the stem, along the starboard side?

A. Yes, sir.

Q. Were there any marks at all on her port side?

A. No marks whatever.

Q. As I understood you to say, this indicated to you that the "Chester" ran into the "Oceanic"?

A. Yes, sir.

Q. At what point did the "Chester" strike the "Oceanic"? what point on the "Chester"?

A. Somewhere about a little abaft the foremast.

Q. How many feet back of her stem on the port side?

A. Approximately, 30 or 40, about 40 feet, say.

Q. Now, applying the same rule as to the marks on the "Chester" that you applied as to the marks on the "Oceanic," did not the marks on the "Chester," the fact that the marks on the point of impingement on her were 30 feet back from her stem on her port side indicate to you that the "Oceanic" ran against the "Chester"?

A. No, sir; because I think if the "Oceanic" had struck the "Chester" she would have had marks on both sides.

Q. Taking the mark of the "Chester" alone, was it?

A. The "Chester" having momentum or way upon her, and running across the "Oceanic's" bow, directly the ships came in contact together, the plates and beam ends and stringer plates would make the piercing marks into the "Oceanic" plates that were made. The marks were pierced in.

Q. Suppose the "Chester" had not in fact gone down and her side had not burst open, but there had been some marks on her port side. Applying the same rule to those marks that you applied to the "Oceanic," what would your examination of the "Chester" have indicated as to which one ran against the other?

A. If the "Chester" had not sunk, my assumption is you would have found the "Chester's" plates bent in and pushed aft on the after part of the fracture. The fore

side would not have shown any trouble except the breaking of the plates.

Q. Your theory is that the "Chester" had considerable headway to the north?

A. She must have had or she could not have got across the "Oceanic's" bow.

Q. At the very moment of the collision, as I understood you from placing the two models, occurred, the two ships were almost at right angles with each other?

A. Nearly; not quite, though.

Q. The breaking into the "Chester" was caused by her momentum forward, and not by her momentum towards the "Oceanic"?

A. Her momentum forward and sideways. The ship, clearly to me now and always from the time of the collision, seemed to come in a motion not only in a headway, but sideways, as if she was actually acting on her port helm, as if her helm was hard aport. You can see the same motion on a yacht tacking in a wind and putting the helm down. It is a head motion and a side motion.

The Court—Q. Described sometimes by some people as the swinging of a sleigh?

A. Just the same as the swinging of a sleigh going around the corner, exactly.

Mr. White—Q. Explain how it could be that the "Chester," having the tide tending to carry her to the right, and having her motion forward, and the two vessels striking at right angles, or practically so, how the "Chester" could have come down and struck the "Oceanic" on the left at the same time you were going backwards with the "Oceanic"?

A. The engines were going back, but the "Oceanic" was simply stopped. She was not going back much. The motion was almost imperceptible. She was not stopped dead. When the "Chester" began to act on what I thought was her port helm. At the beginning of the tide and afterwards, she got into the same tide that the "Oceanic" was in; the influence of the tide was the same in both ships.

Q. The tide was not a factor at all, because it carried them equally?

A. After the "City of Chester" had crossed that tide rip that is claimed by the "City of Chester" to have caused her to act as if under a port helm, after she got across that and got into the other tide, she was under the same influence of tide as the "Oceanic" exactly.

Q. So that the tide would not throw the "Chester" against the "Oceanic" or the "Oceanic" against the "Chester?"

A. The tide would not throw the "Oceanic" against the "Chester" nor do I think the "Chester" against the "Oceanic." It is impossible. When two bodies are in the same tide, unless there is some other action on these two bodies, they will maintain their relative position in the tide, and both float along with it, as far as you like.

Q. Not considering any other forces in operation on the two vessels, they would have floated in so far as the tide was concerned; the "Chester" floated in sideways and the "Oceanic" coming with her stem towards her; is that right?

A. Without considering any other influence, wind or engines, or anything.

Q. There was no other force in operation on the "Oceanic," as I understood you?

A. No other force when?

Q. On the "Oceanic" at the time of the collision?

A. I do not understand your question.

Q. At the time of the collision there were no other forces operating on the "Oceanic" except the tide?

A. Yes; the engines were acting full speed astern.

Q. She was then overcoming the tide?

A. No; not at all. She was simply overcoming her progress through the water.

Q. As I understood your examination Thursday, that part of it in narrative form, you said you had seen the water come forward from the propeller of the "Oceanic" in such a way that you saw she had overcome her momentum forward?

A. She had overcome her momentum forward.

Q. Omitting the tide as an influence on her, there was nothing left at all in the whole matter but whatever momentum the "Chester" had. Is that correct?

A. That is, in my opinion, correct.

Q. And the tide at the time of the collision, although it might have brought the vessels up into that position, still, as they were then in the same tide which was the flood tide running in through the middle of the channel, would not influence the matter at all, one way or the other?

A. That is right.

Q. Then the collision must have occurred entirely, as you understand it, by reason of some momentum had by the "Chester"?

A. The momentum that she had due to deviation from

the apparent course that she intended to take. It was not the momentum alone.

Q. Explain to the Court what you mean by that factor, the deviation from the apparent course she intended to take?

A. She intended to pass us on the starboard side. The signals were given to that effect and answered by the Captain of the "Chester." The whole course of the navigation of the two ships depended on that. If the "Chester" had starboarded his helm and altered his course one point to the left, he would have cleared the "Oceanic" absolutely. There could have been no collision.

The Court—Q. That is at the time of the first signal?

A. That is at the time of the first signal.

Q. At the time of the second signal you did not indicate how much change the "Chester" would have had to have made in its course in order to avoid the collision?

A. A point or two points; not more.

Q. Not more than two points after the second signal?

A. If it had been absolutely complied with at once.

Q. It would have prevented the collision?

A. It would have prevented the collision.

Mr. White—Q. When you throw the helm of a vessel hard astarboard, how many points will that change her course?

A. It depends on the speed of the ship, and how far you want her to go, if you put the helm hard astarboard and go full speed ahead.

Q. It depends on the size of the ship?

A. Not at all.

Q. How many knots an hour would be dead slow on the "Oceanic"?

A. About four knots.

Q. What is full speed?

A. Fourteen.

Q. I presume it would require a great deal more water in which to turn the "Oceanic" completely around, if she was going dead slow, than if she was going at full speed?

A. No, sir; I think probably she would turn in less space going dead slow.

The Court—Q. But longer time?

A. But longer time, but I have never tried it. It is never tried in anything except men of war.

Mr. White—Q. A longer time, but no greater diameter?

A. I think not; speaking now generally.

Q. You think in still water you probably could turn the "Oceanic" in a mile across the water, either at dead slow or full speed?

A. Yes, sir; it would probably take longer rather at full speed, on account of the speed of the ship, than it would when she is going slow.

The Court—Then a vessel obeys its helm quite as well, if not better, when going dead slow than if going fast?

A. No, sir; she is slower in her motion.

Q. So far as distance is concerned?

A. Speaking generally, I think a ship going dead slow with her helm hard astarboard would complete the circle in as small a distance as a ship going full speed, but would take longer over it.

Mr. White—Q. How far off were you from the north shore when you sighted the “Chester?”

A. About a quarter of a mile, I should say, from Lime Point.

Q. How far were you from the “Chester?”

A. About half a mile.

Q. In steering a vessel, in attempting to turn her, and not backing at all, can you turn her any faster than simply to put her helm hard aport or hard astarboard?

A. You can turn a ship in a small distance by backing, but she will only turn one way.

Q. If you do not back at all, the shortest space in which you can turn her is to take whatever water is required by putting the vessel hard astarboard or hard aport, depending on which way you want it to turn?

Q. Whichever way we want to turn her for safety, you take the biggest water you have got; whichever side you have got the biggest water.

Q. I am not asking which side you propose to turn. I am asking you whether putting the helm hard astarboard or hard aport turns you as fast as you can turn her that way?

A. Oh, yes; going ahead all the time.

Q. If you wanted to make a very large turn—swing around a two-mile circle—you might put your helm half astarboard?

A. Yes.

Q. If you wanted to turn in the shortest space possible, and still going ahead, the most you could do is to put your helm hard astarboard?

A. Yes, sir.

Q. You think you can turn the "Oceanic" in a mile of water when she is hard astarboard?

A. Without having any actual experiments on the thing, I believe she could turn in a mile. I am not prepared to state conclusively what distance she would take.

Q. I want you to state why, when you were a quarter of a mile from the north shore, and half a mile away from the "Chester," and turned your helm hard astarboard, that you avoided running into the north shore?

A. How we avoided running into the north shore?

Q. Yes?

A. Because there was never any idea of running into the north shore. We could see it.

Q. From the time you sighted the "Chester" she was a half a mile from you, you kept your helm hard a starboard?

A. Yes, sir.

Q. And ran that half a mile, and you were a quarter of a mile from the north shore, I want to know how you avoided running into the north shore?

The Court—Q. With your helm hard a starboard?

A. The ship was going at very slow speed, and, naturally, she took a long time to move. She did move to the left, but how much I cannot say—not sufficient to endanger the ship going on to the shore.

Mr. White—Q. Is that a factor in it—the fact of her going dead slow?

A. She would take very much longer to do it, that is all.

Q. But not any more water?

A. I don't know that she would. It is only an as-

sumption on my part. As I have told you, we never experimented.

Q. You know something about it. You have navigated that ship for a dozen years.

A. Yes, sir.

Q. Have you any further explanation to make of why it was you did not run into the north shore?

A. The only explanation is, we did not and never would while I was on board the ship. I can see the north shore.

DAVID FRANKLIN COOKSON. Called for the plaintiffs.
Sworn.

Mr. White—What is your calling?

A. I am an engineer.

Q. Were you the engineer on the "City of Chester" at the time of her collision with the "Oceanic," on August 22d, 1888?

A. I was.

Q. You were the Chief engineer, were you?

A. Yes, sir.

Q. Where were you at the time the vessel collided?

A. In the engine room.

Q. I will ask you what apparatus, if any, the "Chester" had for signaling to the engineer from the bridge, from the pilot house?

A. I had a telegraph from the bridge.

Mr. Barnes—I understand that we are not going to try the "Chester" or anything that she did.

Mr. White—I will do what I can to show that the "Chester" is free from blame.

Mr. Barnes—That cuts no figure.

The Court—Suppose she was entirely free from blame?

Mr. White—If I can show she was entirely free from blame, there is not any question about the result of this case, if your Honor makes that finding that she was entirely free from blame; because, as I said before, this is one of those cases in which both vessels cannot be free from blame. It cannot be contended successfully by the other side that the science of navigation is so crude an art at this late day in the world, that two vessels in clear water and not a clear day, will collide in a harbor like that of San Francisco.

The Court—Go on, if that is your theory.

Mr. Barnes—Then I desire to take an exception to the testimony as to what was done on board the “City of Chester,” or her connection with it; because whether she was to blame or not cuts no figure in this case, and the negligence, if any, is not imputed to these plaintiffs, and the want of negligence, if there is any such want, does not help them so far as we are concerned. The case is wholly directed to whether the “Oceanic” was properly governed and controlled at that time; and I repeat, because I would like to have your Honor’s ruling upon that direct proposition, that assuming he can show that the testimony tends to prove that there was negligence on the part of the “Chester,” that is totally immaterial because the negligence of the “Chester” is not to be imputed to the “Oceanic,” nor on the other hand can the defendants impute to the plaintiff the negligence of the “Chester” in order to escape liability. In either aspect of this case, the “Chester being out of this controversy entirely, it must stand on precisely

the same footing that any other case of injury does stand, to wit, that there was an injury, and that it was caused by some act, neglect or default of this plaintiff, and the argument of counsel that it is impossible that an accident should have happened without anyone being to blame is of no sort of significance, and if we were to wash the "City of Chester" as white as snow that fact would not of itself have a tendency to establish fault or negligence. It is a fact to be proven on the part of the "Oceanic."

The Court—That is just the point, because all the other things disappear. The only other question is, if the "Chester" was absolutely without any fault, does that fact tend to prove the fault of the "Oceanic"?

Mr. Barnes—No; that is the very proposition, and that is so plain and self-evident when you have got to remember that negligence is a fact to be proven, and not an inference to be drawn. To say that the "City of Chester" was without fault does not prove as a fact that the "Oceanic" did anything wrong at all. There are established laws which we must comply with. There are laws of Congress and laws of prudence and laws of common sense. The "City of Chester" is out of it, I say, because if she was free from blame that does not prove anything, because if she was guilty of a fault the defendants cannot impute it to these plaintiffs, if she was as black as ink, nor can the absence of it help the plaintiffs, so far as we are concerned, if she was as white as snow. I do not see how, in the present attitude of the case, the "City of Chester" not being a party to this action, the owners of the "Chester" not being here soon, the whole case depending on whether the "Oceanic" did something it ought not to do which approxi-

mately contributed to this disaster, that counsel can proceed in this way. The inquiry must stop there.

The Court—The point is a very interesting one ; I think perhaps it is a little different from the other question raised this morning, but I will admit this testimony subject to the same conditions. The objection will be overruled.

Mr. Barnes—I will submit to your Honor's ruling.

Mr. White—Read the question, Mr. Reporter.

• (The reporter reads the previous question.)

A. I had a telegraph from the bridge.

Mr. White—Q. Was the telegraphic apparatus made use of for signalling from the bridge to the engine-room and back to the bridge, substantially like this one ?

A. A similar design.

Q. How long were you engineer of the "Chester" ?

A. From seven to nine years.

Q. Was this telegraphic apparatus effective and a good one ?

A. Yes, sir.

Q. Go on and tell what you know in your own way about this collision that occurred on the morning of August 22nd, 1888 ?

A. The ship left Broadway wharf somewhere about 9 o'clock. The ship was put on her course and engines run full speed ahead. After that I left the engine-room to go to my own room to get coffee. I went into my own room for a moment, I believe, and from there I went to the star-board side of the ship to look over at Lombard street wharf. I then returned to my room to finish my coffee, but did not go in the room. I went into the engine-room down on the working platform. After I was there a short

time, we received the bells, to the best of my recollection we received a bell to go full speed astern. The position of the indicator ahead, I don't recollect. We worked the engines full speed astern, and afterwards received the shock of the collision. After the shock we received a bell to stop, which was the last bell that I received, which the assistant engineer received rather.

Q. How long a space intervened from the time you sent her full speed astern before you received the shock?

A. Really, Mr. White, I could not say. I have no idea at the present time how long a time it was. It was, however, not a very long time; a very short space of time.

Q. You do not know what the indicator showed at the time that you got the order "full speed astern"?

A. I do not know; I do not recollect.

Q. You had been out of the engine-room?

A. I had been out of the engine-room.

Q. After you got the order to stop what did you do?

A. I ordered the assistant engineer on watch to go below, and take a look round the fire-room. I ordered the pumps to be started and the soundings to be taken. I stood by the engines myself waiting further orders by telegraph. In the meantime, not getting any orders, I stepped up on the upper platform and looked out of the engine-room door. I found that the water was well-advanced on the main deck aft; that is, it was as far as the mess-room. I stepped into the engine room and called for all hands to come up and save themselves. I then passed through the saloon up on to the hurricane deck on the starboard side. I saw nothing there as it was foggy. I passed through between the forward house and the after

saloon to the port side, and loosened my shoes and stepped overboard; I swam to the small boat and was pulled in.

Q. You jumped overboard before the "Chester" went down, then?

A. Yes, sir.

Q. I will ask you, taking this model, about where you were; at what point you jumped overboard? Indicate it on the model?

A. I jumped overboard here (pointing).

By Mr. Barnes—Q. On the port side, just aft the funnel?

A. On the port side aft the funnel.

Mr. White—Q. A little back of the funnel or by the funnel?

A. Back of the funnel; abaft the funnel.

Q. At the time that you were there, did you see the "Oceanic?"

A. I don't recollect seeing the "Oceanic" until after I got in the small boat.

Q. What small boat was that?

A. A small boat belonging to the "Oceanic."

Q. Do you know whether any boats of the "Chester" were got out?

A. I do not, of my own knowledge, know of any boats of the "Chester." I was down below. When I got out it was time for me to get out, and I got out as fast as I could.

Q. You stayed down with the engines until you only had time enough to save yourself?

A. I stayed down with the engines until the ship was

probably in that position; the water was at the mess-room door on the main deck.

Q. That is, her bow was away down in the water?

A. Her bow was down in the water.

Q. How was the "Chester" manned? What kind of a crew did she have?

A. We had, I believe, 12 or 13 men in the engine-room. I don't know how many were on deck or in the steward's department.

Q. How were your men; were they competent men or otherwise?

A. All competent men.

Q. Of what nationality?

A. The engineers were American citizens. The firemen, I believe, with one exception, were Irish, belonging to Ireland; the only exception was, I believe, we had a Swede or a Norwegian, something of that kind; I don't know exactly what nationality he was.

Q. Do you know where the collision occurred?

A. No, sir; I do not.

Q. What kind of weather was it?

A. When we left the dock it was clear; in passing Lombard street wharf I saw Lombard street distinctly, and I do not know what the weather was after that, until I came up from the engine-room, when it was foggy.

Mr. Barnes—Q. That is after the collision?

A. After the collision.

Mr. White—Q. How foggy was it?

A. I do not know I can tell you how foggy it was. I could not see anything when I came up from the starboard side. There was nothing to be seen from the engine-room

door. The engine-room door is on the starboard side. When I passed over on the hurricane deck and over to the port side I saw the small boats and various debris.

Q. You mean to be understood that the weather was clearer on the port side than on the starboard side?

A. I do not mean to say that, but those objects were there to judge by. On the other side there was no objects to be seen, so I could not judge how thick the fog was. It was simply a haze of fog; I could not see anything.

Q. Do you remember whether you could see any distance of clear water on the starboard side?

A. I don't recollect. I don't think I saw any clear water.

Q. You think it was foggy all round; that is, on that side?

A. Yes, sir.

Q. Do you know of any fault committed in the engine room, or in the giving or obeying of orders, that in any way contributed to that collision?

A. None, whatever.

CROSS-EXAMINATION.

Mr. Barnes—Q. What was the tonnage of the "Chester?"

A. I believe the net tonnage was something over 700; the gross tonnage something between 1100 and 1200 tons.

Q. Do you know what her length was?

A. Her length was somewhere in the neighborhood of 210 or 220 feet.

Q. What draught of water?

A. We drew from nine to thirteen feet, I believe.

Q. What was the steering-gear? Did she steer by hand, with a wheel?

A. By hand.

Q. With the ordinary wheel?

A. Yes, sir.

Q. What wharf did she depart from?

A. I think Broadway, No. 2.

Q. Who was in charge of the engines that morning?

A. The second engineer; I believe his name is Rufus.

Q. How many engineers were there on the "Chester?"

A. One chief and two assistants.

Q. You were the chief?

A. Yes, sir.

Q. The first assistant was who?

A. William Bowen.

Q. And the second assistant?

A. Rufus Comstock.

Q. Where were you stationed, and your duty on that steamship when she left Broadway wharf No. 2?

A. In the engine room.

Q. To do what?

A. To see that the engines were properly worked.

Q. And you were there for that purpose?

A. Yes, sir.

Q. And you did so?

A. Yes, sir.

Q. And they were worked all right?

A. Yes, sir.

Q. Where was the station of the first assistant engineer?

A. The first assistant engineer was not on watch. The rules and regulations of that company do not call for the first assistant to be in the engine room unless he is on watch.

Q. He was not on watch, and not in the engine room?

A. No, sir.

Q. Where was he?

A. I don't know. I presume he was abed.

Q. Abed?

A. Yes, sir.

Q. The second assistant was actively busy about the engine room looking after things?

A. Yes, sir.

Q. Whereabouts is the engine room that you were stationed in?

A. I do not know that I understand your question, Mr. Barnes.

Q. What part of the ship, I mean?

A. Somewhere about here (pointing).

The Court—Abaft of the funnel?

A. Abaft of the funnel.

Mr. Barnes—Q. And below the deck, of course.

A. Below the deck, yes.

Q. So that when you were in the engine room you had no information of what was going on, except such as you got through the telegraph?

A. No, sir.

Q. What was your only means of communicating with whoever was on the bridge and in command of the ship?

A. We had a speaking-tube.

Q. You had a speaking-tube besides?

A. We had a speaking-tube besides.

Q. Was that generally availed of? Or was it the telegraph you used?

A. We used them both.

Q. Under what circumstances were they used as one distinguished from the other; the ordinary signals to work the engines came by telegraph?

A. Yes, sir.

Q. What was the speaking-tube used for—to ask you why you did not hurry up, or anything like that?

A. Various different orders that the Captain chose to pass down to the engineers were received through the speaking-tube.

Q. When you were in the engine room you had to keep yourself alive, not only to see what the telegraph dial said, but what might come down the tube?

A. Both instruments gave an alarm.

Q. That is what I wanted to get at. Whereabouts did you get the order to go ahead full speed?

A. I presume after he had straightened the ship round on her course, just off Broadway No. 2.

Q. Shortly after getting free from the dock?

A. Yes, sir.

Q. By the way, when you got the order to go full speed ahead, what did you do?

A. Put her on full speed ahead.

Q. You got the order off Broadway No. 1 or No. 2 to go full speed ahead?

A. Yes, sir.

Q. What was the next order that you got that you remember?

A. The next order that I got personally was full speed astern, but I was out of the engine room in the meantime.

Q. The next order you got was full speed astern ?

A. Yes, sir.

Q. Did you go full speed astern ?

A. Yes, sir. I would state, Mr. Barnes, that the assistant engineer is in charge of the engines. The chief engineer is supposed to be in and about the engine room at the making of wharves or landings. I was not in the engine room at this time ; I left the engine room and returned again.

Q. I am simply asking about your knowledge. Anything that transpired when you were not in the engine room you are not supposed to know. When the order came down to go full speed astern, did that come by the telegraph or come by the tube ?

A. It came by telegraph.

Q. Did you immediately comply ?

A. It was immediately answered.

Q. By whom ?

A. By myself and the assistant engineer.

Q. Did you take the time of day any time about the time of the collision ?

A. At the time I felt the shock I looked at the engine room clock, and to the best of my ability it was twelve minutes to ten.

Q. Twelve minutes to ten when the shock occurred ?

A. When the shock occurred.

Q. What time did the "Chester" go down ?

A. I do not know.

Q. About how many minutes after the shock when you say it was 9:52?

A. It is our place to keep a record of all that transpires in the engine room, and as soon as I felt the shock I glanced at the clock, which was immediately.

Q. I only want to get your general impression. How long after that was she afloat, do you think, five or six minutes?

A. I do not think she was afloat more than four or five minutes.

Q. When you went to call those down below to come and save themselves, was there anyone below?

A. One man.

Q. Do you remember who he was?

A. The second assistant engineer.

Q. And his name?

A. Rufus Comstock.

Q. Did he come up?

A. He came up, yes, sir.

Q. Did he go over the side of the ship with you?

A. No, sir; he went over the side of the ship, but not until after I was in the water.

Q. Did he follow you over? Did you see him?

A. I saw him in a small boat. I did not see him go over.

Q. Was he rescued by the same boat that pulled you in?

A. He was rescued by another boat. Afterwards he got out of that boat and came to the boat in which I was in.

Q. Was the boat that rescued him a boat of the "Oceanic" also?

A. I do not know.

An adjournment was here taken until two o'clock P. M.

AFTERNOON SESSION.

D. F. COOKSON. Recalled.

Mr. White—Q. You spoke of a record being made down in the engine-room of whatever order you received and obeyed. That record, I presume, went to the bottom along with the ship?

A. We had no time to make a record, we noted it mentally, and make at our leisure. There was no record made.

Q. The record of the of the other movements of the ship went down with it?

A. Yes, sir.

Q. You say you do not remember whether any order was received to go dead slow, or at half speed, between the time you started at full speed and the time you got the order to go full speed astern?

A. Not of my own knowledge; I do not recollect it.

Q. At the time you came on deck, just before the ship went down, could you see any of the points of the land in that vicinity?

Mr. Barnes—Counsel examined this witness and got through with him. I did not say much about it in the case of the Captain, but let him go on with it, but why should he reopen this case again. I only asked the witness a single question, now counsel is going on again over the whole case. He did the same with Captain Metcalfe,

and the same thing with the pilot. Inasmuch as they were the principal officers of our ship, I made no objection, but I do object to the whole matter being reopened.

The Court—General Barnes objects on the ground that you have exhausted this witness, Mr. White.

Mr. White—I guess on this question it is so. That is all.

CHARLES McCULLOM. Called for the plaintiff, testified as follows :

By Mr. White—Q. What is your name ?

A. Charles McCullom.

Q. What is your calling ? What do you do for a living ?

A. I am first officer of the "Pomona," now, sir.

By Mr. Barnes—Q. Of the "Pomona ?"

A. Yes, sir.

By Mr. White—Q. What position, if any, did you hold on the 22d of August, 1888 ?

A. I was first officer of the Chester.

Q. Were you on the Chester at the time of the collision between her and the Oceanic ?

A. Yes, sir.

Q. Go on and state, Mr. McCullom, all that you saw and noticed and did about that collision.

A. Well, we left Broadway wharf about 9 o'clock ; it was about ten minutes or about a quarter to nine, or something like that. We left the dock and it was clear until we come down to the Presidio, somewhere around there, and I went down below for to see that everything was all right, because when we get outside the ship rolls, if any-

thing has gone wrong, and I am to blame; so I was down there fixing things, and heard these steamers blowing the whistles.

Q. What whistles did you hear?

A. They were blowing the fog whistles. I didn't notice that particularly, because I had no position on deck; I was below. Then I heard two whistles blow, and then two again, and then I came up on deck; the Oceanic was about—she wasn't more than 50 feet away from us; about 50 feet; and I sang out for the people—says I: "Get back out of the way!" and I stood close alongside the pilot-house, right alongside the pilot-house, and then, when she struck us, I sang out for the people to come and get aboard of her.

Q. On board of the "Oceanic?"

A. Yes; they were both level together, and you could step right on board of her.

Q. On board of the Oceanic?

A. Yes, sir.

Q. Taking these two dummies here, show us about what the position of the two vessels was.

A. There is where she struck us (showing), right here, about twenty feet from the bow, and went right about ten feet into us.

Q. About twenty feet from the bow?

A. Twenty feet, sir; there is where she struck us, right here.

Q. Twenty feet back from the bow of the Chester?

A. Yes; that is where she struck us, right there (showing).

Q. At about what angle did the ship strike you?

A. About that (illustrating). I saw her coming, and as I saw her coming I sang out to the people to get back. I knew she was going to hit us, and she took us right here (showing).

Q. How far did the Oceanic get into the Chester?

A. About ten feet.

By the Court—Q. I thought you said twenty feet?

A. No, sir; ten feet she went into us. She got ten feet into us when she struck us. Ten feet right here (showing).

Mr. Cobb—He said she struck her twenty feet from the bow.

By Mr. White—Q. Where did you stand?

A. I stood right at the pilot house.

Q. And when you came down, did you?

A. No, I wasn't up on top at all. I was on this deck (showing). There is another deck up above. I was down alongside the pilot house on this deck here (showing).

By the Court—On the upper deck?

A. No, not on the upper deck; there is three decks to that ship.

By Mr. White—Q. And you stood there and helped the people to get across on the Oceanic?

A. Yes; we passed them up as long as they would go, you know; some would not go along; they went in and got their baggage, and we passed them along up until we couldn't reach any more, and then we had to help ourselves.

Q. From the position in which you stood you could see very plainly how far the Oceanic had got into the Chester.

A. She was about ten feet into us.

Q. About half way through?

A. About half way; yes, sir.

Q. State whether or not you felt the shock when the two vessels struck together?

A. No; I didn't feel no shock. She went right through just like cutting cheese.

Q. Do you know where the vessels were?

The Witness—At the time this collision occurred?

Mr. White—Yes, sir.

A. Pretty close to Fort Point.

Q. How far off from Fort Point were they?

A. I don't know; they were pretty close. I could not say how far, but they were close to Fort Point.

Q. You have been in and out through this channel very many times?

A. Well, a few times; yes, sir.

Q. What were the relative distances of these vessels as relating to Lime Point and Fort Point. Which one were they nearest to?

A. Nearest to Fort Point.

Q. How do you know?

A. Well, I know that they were both, I guess both of them was pretty close to Fort Point, closer than to Lime Point.

By the Court—Q. You say they were closer to Fort Point than to Lime Point?

A. Yes, sir.

Q. Well, how do you know that?

A. I know it, because it was clear enough for us to tell when we went down the bay, and we went down about t 1

Presidio, and I was down below when I heard the whistles blow, and we went against a strong flood tide.

Q. When you came up on deck did you see the shore on either side?

A. No, sir, I did not.

Q. How many times have you been in and out through this channel—through this harbor?

A. I don't know how many times; I could not tell you that.

Q. How long have you been engaged in the seafaring business here near San Francisco?

A. About twenty years.

(No cross-examination.)

CAPTAIN THOMAS WALLACE, called for plaintiffs, testified as follows:

Mr. White—Before examining Captain Wallace, I desire to call your Honor's attention so that it won't mislead you, to the fact that this map here is not at all correct in regard to the positions of Lime Point, Point Diablo and Point Bonita, as compared with the scale that is made use of from Fort Point and Lime Point, Point Bonita is, in fact, as your Honor will easily notice by looking at that other map, about three-quarters of a mile further to the west than it is indicated on this map. (Referring to the sketch on the blackboard.)

Mr. Barnes—That was intended to be nothing more than a rough sketch, so that the witnesses could refer to it. But your Honor has the correct coast survey map before you all the time.

The Court—It is intended to be a sketch only.

Mr. Barnes—It is nothing but a rough sketch, and the correct and regular survey map is before your Honor.

Mr. White—That map is undoubtedly correct.

Mr. Barnes—We had to foreshorten the thing a little bit, in order to get the point on the blackboard at all.

By Mr. White—Q. Your name is Thomas Wallace, isn't it?

A. Yes, sir.

Q. What is your profession?

A. Master mariner.

Q. How long have you been a seaman?

A. Thirty-two years.

Q. How long have you been a commander of a vessel?

A. Up to the present time.

Q. Since the first time?

A. Twenty-two years, or twenty-one years and eight months; about that.

Q. You were the Captain who was in command of the steamship City of Chester on the 22nd of August, 1888?

A. Yes, sir.

Q. What were the dimensions of the Chester?

A. Well, about 205 feet long, and about 32 feet beam, and she was 16 feet in depth.

Q. Sixteen feet in depth?

A. Yes, about 16, I think.

Q. What was her tonnage?

A. About eleven hundred—about eleven or twelve hundred gross, and eight hundred and sixty odd tons net, I think it was. These are not the exact figures, but it is somewhere near that.

Q. Go on and state, Captain, from the time you left

Broadway wharf on that morning, up to the time of the sinking of your vessel, what occurred.

A. Well, we left Broadway wharf that morning shortly after nine o'clock, and took her out, the tide being flood tide astern; turned about, and we hooked her on, as soon as we got her stern down—hooked her on full speed and went down the bay. It was clear weather until we got down to Presidio shoal buoy, and it was still clear in shore to the southward of us, but thick outside of us; but we were running on the edge of the fog, and we started the fog whistle blowing—that is, we blowed once a minute—and we run into the fog before we got down about half way between the Presidio shoal buoy and the Fort, we ran into the fog.

By the Court—Q. Was the Presidio shoal buoy to your right or left?

A. About 150 feet to the right.

By Mr. White—Q. Then you were inside of it?

A. Yes, sir.

Q. Inside the shoal?

A. Yes, sir. We steered the usual course going down to clear the fort, and down a little ways, off Presidio, down a little ways, we ran into the fog quite thick. Still, I could see the land in shore of us going down, and abreast of old Presidio wharf I could still see some piles on it; then it got down very thick, and just at that time I heard a steamer outside of us. She seemed to be right ahead, about in that direction (showing), and she blowed two whistles, and I answered them with two. I will state that before that we had slowed the ship down, before we ran into where it was very thick, and proceeded on; and a little further down I heard this ship blow two more whistles; I answered

them with two whistles, and I put my helm hard to starboard. I put my helm first thing hard to starboard; the first time; when I heard the first whistle. I hadn't seen anything of the ship then; so far as the time, I didn't know the exact time, it was certainly less than a minute, about that time. I seen the spar buoy of Fort Point, off Fort Point about 100 to 150 feet off our port bow, and at the same time a ship loomed up about two points on our port bow, and I immediately saw that it was an utter impossibility, with the helm hard astarboard, to clear the "Oceanic." I rang the indicator full speed astern and let the flood tide take her bow, her stern being still in the eddy, and let her swing right around, and in less than two minutes she crashed into us and cut us more than half way in two, and I directed everybody as soon as I saw it, I directed the officers when I heard the waters rush in, I directed the officers of the ship that were forward, to pass everybody that they possibly could on to the "Oceanic" before there was any danger of our sinking; but before we got them all passed on she sank. Seeing that there was no chance to do anything else with it, I left the bridge; she sank right there, and we got one boat out, and some men got another boat about out; one boat had all the passengers in her that she would hold, and the other was just being got ready when the ship went down, and I was on the bridge and I looked around and I could not see anybody else on the boat, and I left the bridge and went aft, and just as the ship was going down I jumped overboard off the stern.

Q. Tried to get as far away from it, I suppose, as possible.

A. Yes, sir.

Q. Now, as I understand you to say, just a minute or two before the collision occurred you saw Fort Point buoy about 100 feet away from you ?

A. In the neighborhood of 100 feet; not over that.

Q. Where was the Oceanic; what direction was she at that time ?

A. She was in our port bow.

Q. How many points off your port bow was she?

A. A point and a half or two points off our port bow.

Q. Had you seen her at all before that ?

A. No, sir; that was the first I seen of her.

Q. Where were you up to the time of the collision; on what place on your vessel ?

A. I was on the bridge.

Q. What kind of a lookout was being kept on your vessel ?

A. We had a first-class lookout.

Q. Well, what was it ?

A. I had the second mate forward on the topgallant fore-castle, with a man with him; I had another man on the bridge blowing a whistle, and I stood on the bridge with him; I guess that is all the men that were on the lookout. Then there were two quartermasters in the pilot house, one of them looking out of the window.

Q. Was any attempt made upon your part to see the Oceanic before you say you did see her ?

A. Yes, we were looking for her.

Q. What was the reason you didn't see her sooner than that ?

A. Well, It was so foggy we couldn't see her.

Q. Where was the fog from you, was it all around you, or was it laying in some particular direction ?

A. No, sir ; it wasn't exactly all around us until we got almost abreast of the Fort. It was perfectly clear to the southward of us—perfectly clear—and we were running right on the edge of it. It stood like a wall ; it started from Fort Point and took in Alcatraz Island ; it was as straight as a wall.

Q. How far off from the south shore did this collision occur ?

The Witness—From Fort Point, do you mean ?

Q. Yes ; from Fort Point ; from the south shore.

A. Well, there is 150 feet off the buoy. Probably about from 600 to 650 off Fort Point.

Q. In what direction ?

A. North—nearly north.

Q. Had you or hadn't you passed the buoy ?

A. No, sir ; we hadn't passed the buoy.

Mr. Barnes—Will you take this chart—assuming that map to be approximately correct—(referring to diagram on blackboard) will you make a chalk mark where you say you were ?

Mr. White—This is supposed to be seven and one-eighth of a mile from there across to there (pointing).

A. It was about in that position, sir (marking with cross), that is, supposing the scale to be correct, right in that position.

The Court—Now mark your course going out.

A. Here is Presidio shoal buoy ; I passed inside of it, inside in that direction (showing), and were just barely near the buoy here when this vessel—when we were hard

to starboard—when we met the ship here heading west southwest, and we had this buoy 150 feet on our port bow, the ship headed west south-west, and seeing the other ship coming in, her bow in that direction (showing), there was nothing, not a tow-boat nor anything else could have cleared it; and all I could do was to keep our bow in the tide and turn her back full speed and let her drift around, which we did.

By Mr. White—Q. Was there any influence on either of those ships by the tide that had anything to do with that collision so far as you know?

A. I don't understand the question, Mr. White.

(Reporter repeats the last question.)

Q. (Continuing) That is, I will ask you whether or not the tide—the flood tide—as it comes in here and strikes this shore just outside of Fort Point (showing) is then turned strongly across towards Lime Point?

A. Yes, the tide floods that way.

Q. Well, now I want to know whether or not the vessel, or either of them, were caught in that tide and deflected any?

A. Yes; as soon as we saw, the moment we met the "Oceanic," our bow was just getting into the tide, and if I had gone ahead and I would have struck the "Oceanic" amidships and perhaps I would have sunk her, and the only thing to avoid that collision was to go astern full speed; while the stern was still in the slack water—at least tolerably slack water—her bow was in the tide. She ran six knots an hour, and let her bow swing around.

Q. Your helm was hard astarboard?

A. Yes, sir.

Q. And the effect of full speed astern was, then, to throw her bow to port (to starboard)?

A. Throw her bow to port (to starboard).

Q. How long was it before the collision occurred that you gave the order: "Full speed astern?"

A. Not over two minutes.

Q. State whether or not that order was obeyed?

A. Yes, sir.

Q. How do you know?

A. Because the ship commenced to tremble and was immediately shaking all over.

Q. How much headway did your vessel have at the time the vessels collided?

A. My ship had sternway.

Q. How do you know that?

A. I know, because I know that within two minutes, when the ship was going ahead full speed, that the ship can be brought to a standstill, and she had been running nearly two minutes at full speed astern when the collision occurred, and she wasn't running nearly full speed before, but about in the neighborhood of half speed before that. That is all I have to judge by.

Q. How fast was the Oceanic going?

A. I have no means of judging that, sir.

Q. What were the equipments and apparatus of the Chester. State whether or not they were proper and sufficient?

A. Yes; we had had it examined by the United States Inspectors, and everything was first-class. Everything that was on the ship was approved by them.

Q. How about your steering apparatus?

A. It was good; as good as could be, without we had steam gearing; but then she was such a small vessel it didn't necessitate any steam gearing.

Q. She was provided with a telegraphic apparatus to signal to the engineer?

A. Yes; they call it a telegraph, but it is not exactly a telegraph. The dials are almost the same as those, but in place of their being worked by electricity, it was a system of wires that wound around and worked the hands, the same as the telegraph itself.

Q. Well, how does that work compared with the telegraph?

A. Identically the same.

Mr. Barnes—It is just the same, Mr. White, except one is moved by an electrical current and the other by the actual motion of the wire; that is all the difference.

The Witness—That is all the difference.

Q. One, wire moves, and the other, electricity moves?

A. Yes, sir.

Q. How were you provided with boats and with life-preservers?

A. We had all that the law required.

Q. Well, in what order were they?

A. First class order, sir.

Q. What kind of a crew did you have?

A. Good crew.

Q. Chinamen or white men?

A. White men.

Q. What number of crew did you have?

A. I think we had—well, it used to vary a little. Once in a while from thirty-six to thirty-eight men;

I am not positive how many we had that particular trip.

Q. Did you have a sufficient number ?

A. Yes; the law called for thirty-two, and we carried always more than that; more than the law required.

By the Court—Q. How many in the fore-castle ?

A. Twelve.

By Mr. White—Q. Was there anything in either the manning or the equipments of the Chester that was lacking when she went out that morning ?

A. Nothing, sir, that I know of.

Q. In what order was her machinery ?

A. First, class, as far as I know.

Q. And when you first saw the Oceanic, in what direction was she heading ?

A. I was heading west southwest; she must have been heading about northeast, northeast by north; I am not positive about that.

Q. And you say she was about two points from you ?

A. On our port bow, one and a half to two points

Q. Was there any time from the time that you were able to see her through the fog, that she appeared to be dead ahead of you ?

A. No, sir.

Q. At what angle were the ships when they collided ? Show to the Judge by using these models.

A. On that angle (showing); right square across.

The Court—Q. Supposing this larger vessel is now coming in through the gate; now, then, locate just where they were.

A. When we first saw her?

Q. Yes.

A. In that direction (showing).

Q. Did you see any time when your smokestack and foremast would be in line with this part of the Oceanic?

A. No, sir.

By Mr. White—Q. At the time that you could hear the whistle over in that direction (showing), you could not see her, but I understand you could see the south shore?

A. Yes, sir.

Q. Well, she was over in the fog, was she?

A. She was in the fog; yes, sir.

Q. And you were outside?

A. Of course I had the fog on this side (showing). The fog was like a wall, and I could see perfectly plain the south shore all the way down almost to Fort Point.

Q. There were some witnesses here that were on the Oceanic that testified that they could see you for perhaps a half a mile away. Can you explain that when you could not see them in that distance?

A. I can't understand how they could see a half a mile off, but I can very readily see that they could see us further than we could see them, for the simple reason that it is the same looking into a room that is all lit up from the outside where it is dark; if you are looking into the room where there is light, you can see everything in it. If you are looking out into the dark, you can see nothing. Here the sun was shining perfectly clear (referring to the position of the Chester), and I was looking out against this wall of fog, and they were looking in the other way, and they may possible have seen a little bit further than I could. I

have noticed that lots of times going out to the heads. And while you are coming in you can see quite a long ways, but going out you can't see a thing.

Q. That is when you are in the fog; one that is in the fog and looks out can see further than one that is outside the fog and trying to look in it?

A. No; that one that is in the fog and looking in where it is clear.

Q. I am referring to being inside the fog bank, the outside ship that is in the fog bank looking out on the clear sky, can see further than the one that is in the clear atmosphere trying to look into the fog?

A. Yes, sir

Q. So that they might have been able to see further than you could?

A. Very likely.

Q. You were your own pilot?

A. Yes, sir.

Q. Under the State law authorizing you—

A. (Interrupting). Under the United States law, sir.

Q. (Continuing). Authorizing the master of a coast vessel to be his own pilot?

A. Yes, sir.

Q. I will ask you whether or not you know Mr. Westdahl of the United States Survey here?

A. Yes, sir.

Q. I will ask you whether or not you pointed out to him as near as you could the point where this collision occurred?

A. Mr. Barnes—I object to that. I don't care what he did with Mr. Westdahl.

Mr. White—Of course you don't care, but I do.

Mr. Barnes—I mean to say—perhaps that wasn't the nicest way to express myself—I intended to say that I object to his making any statement as to what he did with Captain Westdahl, on the ground that it is incompetent, irrelevant and hearsay.

Mr. White—I propose to show by Captain Westdahl that he obtained information from Captain Wallace of the position where this collision occurred, and that then we went out on behalf of the authorities, and having located that point, he, at a time that the tide was the same that it was on that morning, he turned a tug loose at that point to see where the tide would carry her, allowing the tug to float in the same tide from that point for the length of time that the Chester floated after the collision. He determined the force of this tide and the direction it took, and having allowed the tug to float that length of time, he tried that three different times, in order to verify his observation, he concluded that he had arrived at a point where the wreck of the Chester ought to be, and sounded, and found her there. We want to prove that he pointed out to him the place, and then by proving by scientific observations, we will prove that the place pointed out by Captain Wallace corresponded exactly with the place where the collision ought to have occurred in order to bring the wreck to that place; and I expect to prove that the wreck of the Chester occurred just where Captain Wallace says it occurred. And that is now just where Mr. Westdahl found it, after being told by Captain Wallace of the place where the collision occurred.

The Court—That would be matter for Mr. Westdahl to testify to. I will sustain the objection.

Mr. White—We shall except.

Q. Without saying what you told him, did you tell Mr. Westdahl anything whatever in regard to giving him any information in regard to where this collision occurred?

Mr. Barnes—That is the same question, and we object to it on the same grounds.

The Court—The same ruling.

Mr. White—We take an exception.

Q. Well, will you state now, so that I may understand you, about how far from Fort Point buoy the collision occurred?

Mr. Barnes—I object to that, he has stated that twice; there is no use taking up time with that.

The Court—Objection sustained. He says he was about 150 feet north of that Fort Point shoal buoy.

Mr. White—I understand he answered that question that way. He said that when he first saw the Oceanic that he was about 150 feet off that buoy.

The Court—What is your question now?

Mr. White—I want to ask him where the collision occurred; how far off?

The Court—I will let him answer that.

A. About 600 to 650 feet.

Q. Was there anything in the situation of the “Chester” that prevented getting out more boats than you got out?

Mr. Barnes— I object to that as irrelevant and immaterial.

The Court—I will let him answer.

A. Yes; most of the crew were engaged in passing the passengers up over the bow, according to my orders. My judgment told me that was the best way to do to get the passengers ashore; and there was, I think, three men and the second mate that got one boat out, and two quartermasters and somebody else, I don't know who it was, got one of the other boats out, but the ship went down so fast she got to be standing right on end before we got them out; it was hard work to stand on the deck or do anything with them; that was the reason there were not more boats gotten out.

(No cross-examination.)

RUFUS COMSTOCK. Called for the plaintiff, and sworn, testified as follows:

By Mr. White—Q. What is your name?

A. Rufus Comstock.

Q. What is your calling?

A. Engineer.

Mr. Barnes—We understand, Mr. White, that he was second engineer on the "City of Chester." Now, let's go ahead with him.

Q. Were you the second engineer of the "City of Chester" on the 22d of August, 1888?

A. The second assistant.

Q. You were on duty in the engine room on that morning?

A. I was.

Q. Go on and state what occurred up to the time the vessel went down, and afterwards.

A. We left Broadway wharf about five minutes after

nine, I think, and ran full speed until about a quarter to ten, I should judge; and then we slowed down to half speed, and, I should judge, about a minute or a minute and a half, may be it might have been longer, after that when we got a bell, "Full speed astern," and I should judge she was backing about a minute and a half, or it might have been two minutes, when we felt a little jar; it didn't amount to much; then, immediately after that we got a bell to stop; that was the last bell we got.

Q. Was that last bell obeyed?

A. Yes; every bell was obeyed just as soon as it was rung.

Q. Well, after you got the last order to stop? Go on and tell what you did.

A. The fireman came up in the engine room shortly after that and told me that there was water coming in through the bulkhead forward of the boilers, and I went down with him to look through, but I could not see it; I could hear it—it was too dark to see—and I came up again in the engine room, for I thought I might get a bell, although the chief was there, and he could have done that if he did get a bell; and after a little while the fireman came up again and told me the water was coming down pretty fast, and I went down the second time, and while I stood there looking through—looking through there between the boilers to see how much water was coming in—I felt her break loose from the "Oceanic" and went down at the head, and I thought it was pretty near time to get out, and I went up as quick as I could, and when I went in the engine room the fireman had left, and the chief sung out for all hands to get out of it, and I was in the upper end of

it, near the engine room door, and then the water was coming through not twenty feet from me, so I ran back through the cabin to the fan-tail end of the ship, and I jumped over onto the guard and then into the water and got into one of the "Oceanic's" boats.

Q. Did you notice where you were when you came up—where the collision occurred—when you came up from below?

A. The first land that I saw—that was about the time that I got into the "Oceanic's" boat—that was Fort Point. We were pretty close to the shore.

Q. When did you see that?

A. That was about the time when we got into the "Oceanic's" boat—just as I was getting in—about five or six minutes after the collision.

Q. How far off were you from Fort Point?

A. I didn't notice exactly, but I know that we were not very far; I shouldn't think it could have been a quarter of a mile. I don't think it was over a quarter of a mile. I know that we were pretty close into Fort Point buoy—must have been at the time of the collision.

By Mr. Barnes—Q. You had nothing to do with the steering of the ship?

A. No, sir.

Q. Your work was all below the deck?

A. Yes, sir.

JOHN LUNDINE. Called for the plaintiff and sworn.
Testified as follows:

By Mr. White—Q. What is your name?

A. John Lundine

Q. Were you second officer on the steamer "City of Chester" at the time she collided with the "Oceanic," on August 22d, 1888?

A. Yes, sir.

Q. What was the condition of the weather that morning?

A. It was foggy.

Q. What time did you leave San Francisco?

A. A few minutes after nine; I didn't notice the time exactly; I didn't notice it just to the minute.

Q. Where were you; at what place on the vessel?

The Witness—Well, when we left the wharf?

Q. When you left the wharf.

A. I was aft taking my lines in.

Q. Were you on deck?

A. Yes, sir.

Q. What point on the deck?

A. Just in the stern of the ship, until we had cleared the wharf, and when everything was cleared I went below.

Q. After you got into the fog, where did you go?

A. I just came up on deck then.

Q. Where did you go on deck?

A. Right on the fore part of the deck.

Q. Right on the bow of the ship?

A. Yes, sir.

Q. Did you hear any whistle blown from any other ship?

A. I heard it after we got down towards Fort Point.

Q. Where did it appear to be?

A. I heard it on the starboard bow.

Q. Could you see the other vessel at that time ?

A. No, sir.

Q. Were there any signals given ?

A. Well, that fog signal.

Q. Well, what were the signals ?

A. One whistle, then we heard two; we heard a whistle, and immediately afterwards we heard two.

Q. That is, two different signals given by the other vessel ?

A. No, you always blow one whistle when it is foggy, and then you hear two whistles, and we blow two; I don't know how much we blowed; we usually blow two whistles; I don't know.

Q. Well, as I understand you, the first whistle that you blowed was the fog whistle ?

A. Yes, sir; that is right.

Q. Then afterwards you heard two whistles sounded ?

A. Yes, sir.

Q. Could you see this other ship at the time these whistles were sounded ?

A. No, sir; if we could see her, there would be no necessity of blowing the whistles then.

Q. Where was your vessel at that time ?

A. I don't know what position exactly. I know we were not quite up to Fort Point, but pretty close to it.

Q. How far off were you from the south shore ?

A. I didn't notice that; pretty close. If we had gone along our old course we would have been within a ship's length of the buoy.

Q. Could you see any land there anywhere ?

A. I saw the south shore.

Q. You were then about a ship's length from the Fort Point buoy?

A. Yes, sir; if we had been up there. We wasn't quite up there when we heard the whistle.

Q. What direction, judging from the sound, did the other ship appear to be from you?

A. One and a half or one and three-quarter points on the port bow.

By the Court—Q. I thought you said you heard the question on the starboard bow?

A. Yes, that is what I mean.

Q. Where did you see this vessel first, from the starboard or the port bow?

A. The port bow.

Q. You heard the whistle on the starboard bow?

A. Yes, sir; and I saw her on the port bow.

By Mr. White—Q. When you saw her, where was she?

A. She was—I don't know exactly how far off she was. I know she was pretty close. I know, when she loomed up in the fog, I told the passengers to stand clear of the ship; I saw her coming into us.

Q. In what direction was she from you then?

A. Well, she was headed like this ship was headed now, something like that (showing).

Q. Where were you when the vessels actually struck together?

A. I was right on the forward part of her, and she came into us about there (showing), and I was on the fore part, telling the passengers to get out of the way.

Q. At what point on the Chester did the bow of the Oceanic strike her?

A. I don't know; about twenty feet from the bow, or twenty-five; there was about two feet from the mast, and then we had a hatch that was 12 feet, and then on the fore part, the hatch combing was struck.

Q. How many feet back from the extreme point?

A. About twenty feet.

Q. How far into the Chester did the Oceanic go?

A. About half of it; about ten feet.

Q. How wide was the Chester at that point?

A. I don't know her beam there exactly, sir; I forget.

Q. Do you know what motion, what direction your ship, the Chester, had at that time?

A. She was backing.

Q. How do you know?

A. I felt the shaking before I saw the Oceanic.

Q. What occurred after the vessels actually came together?

A. Well, the Captain sang out to pass the passengers on the Oceanic, and a minute or two afterwards I went to to the boats; it might have been a minute, probably it was two, when I started the boats on top of the house; we had another deck on top of the house.

Q. Did you get out any boats?

A. Well, I got one out and the other one started. We had all the lashings cut on all of them.

Q. How did it occur that you didn't get it out?

A. The ship was too much on end. I couldn't swing the davits.

Q. With the bow down in that way (showing), the boats were tilted the same way, and when you tried to lower the boats they would be swamped?

A. Would be swamped. The ship standing that way (showing), we couldn't get them clear of the railing.

Q. Who helped you to get out the boats, if anybody?

A. I had four men with me.

(No cross-examination).

JAMES J. LOGGIE, called as a witness for the plaintiff.
Sworn. Testified as follows:

By Mr. White—Q. What is your name?

A. James J. Loggie.

Q. Where do you live, Mr. Loggie?

A. San Francisco.

Q. Were you a passenger on the Chester at the time she collided with the Oceanic on August 22d, 1888?

A. I was.

Q. Go on and state everything observed by you on that occasion?

A. After leaving the wharf I was on the main deck.

Q. What kind of weather was it?

A. The weather was clear—sunshine—and I stood there on the deck until we got about past Presidio, I should judge, and then we encountered the fog. It being cold, I went in what was called Social Hall, which was in a room off the main deck, and I sat in there I don't know how long, until I heard the engine stop, and then I remarked to some friend—

Mr. Barnes (Interrupting.)—Never mind, we object to his stating what he said to his friend.

The Court—Don't state what you said to anybody else, just state what you did.

A. On noticing that the engines had stopped, I went

outside to see what the matter was, and I observed a steamer, a large vessel; I did not take notice that it was a steamer, but I observed a vessel about, I should judge, 100 yards from us, and I immediately turned and went back into the room that I had left, and returned at once, and when I got back I saw that the two steamers—that the two vessels had come quite close together, and I also noticed that the passengers were running away from the bow of the vessel; I at once turned to this room on account of the danger; I was afraid that the splinters and spars from the collision would hit me, and I returned to this room again and stayed in there for probably not more than a minute, and I came out again and went forward to see what the chances were of getting ashore, and when I got there the vessels had separated, and the Chester was going down very rapidly. I saw there was no chance to get off on the Oceanic, and I returned to about midships, or a little further aft, to the after rigging, and I helped a lady passenger that I was trying to save, left her holding on to the rigging while I went to the state-room to get life preservers. I went in and got the life preservers out from underneath one of the berths; it was attended with a little difficulty to get them out. I don't know how long it was I delayed in there, and when I returned with them I just had barely time to hand one of these to the lady passenger, and the other I obtained myself, and I held on to her with one arm and with the other I held on to the rigging, as the steamer was tipping very fast, and in that position I went into the water. I don't know how far down I went, but I heard an explosion while under the water, and I felt myself twirled through the water on to the surface. When I

got to the surface of the water my first thought was to look after a boat for some object to get hold of, and I noticed a boat, I can't remember just how far off from me, and I swam to the boat, and was hauled in by the men in charge.

Q. At the time you went forward, did you see how far the "Oceanic" had got into the "Chester"?

A. No; I don't remember.

Q. Did you see any land while you were there?

A. I don't remember seeing any.

(No cross-examination.)

JAMES RANKIN. Called for plaintiff and sworn. Testified as follows :

By Mr. White—Your name is James Rankin?

A. Yes, sir.

Q. What is your business, Mr. Rankin?

A. Keeper at Fort Point; Fort Point lighthouse keeper.

Q. Were you such lighthouse keeper on the 22d of August, 1888, at the time the "Oceanic" and the "Chester" collided?

A. Yes, sir.

Q. Where were you at the time of that collision?

A. I was about 200 feet from the extreme point of Fort Point, on the bluff.

Q. About 200 feet from there. In what direction?

A. Due south, 200 feet.

Q. Back up high on the ground?

A. Yes; up on the bluff.

Q. Did you see that collision?

A. No, sir.

Q. Go on and tell the Court what you heard on that occasion?

Mr. Barnes—I object to his telling what he heard if he didn't see anything.

Mr. White—You can repeat the hearsay of steamers.

The Court—Is it the sound of the whistles of the boats that you wish to prove? As to what kind of noises he heard?

Mr. White—Yes, and where it appeared to be.

The Court—I will overrule the objection and hear what it is.

A. About half past nine o'clock I heard a steamer come in blowing a fog whistle.

By the Court—Q. You heard a steamer come in?

A. Yes; she seemed to be going along pretty slow, because she was some time getting up; didn't seem to be getting in closer by her whistle; not much closer. After that I heard the whistle of a vessel going out to sea. She would be, judging by the sound, about opposite the Presidio wharf. They were both going slow by their whistles; didn't seem to be making much headway, but the incoming vessel seemed to be going slower over the ground than the outgoing vessel. They were both coming up close to Fort Point, and I began to think that it was getting dangerous, and I paid more attention to it, and I heard the "Oceanic," the vessel coming in shore, blow two whistles, and I heard the outgoing one blow two whistles in answer. By that time they were nearly opposite Fort Point, not far off, by the sound, but still I could not see them. Then the incoming vessel blew two whistles.

By The Court—Q. That is the second time?

A. The second time the outgoing vessel blew two whistles, and then I heard a crash, and shortly afterwards I told the assistant—

Mr. Barnes—Wait one moment.

The Court—That would be objected to. Don't state what you told anybody.

A. May I state that I sent a man down to telephone into the Merchants' Exchange that there was a collision off Fort Point, and to send out a tug, and at no time did I see either of the vessels, but I thought at one time—about two minutes afterward—that I seen a white streak, but that was just as much imagination, probably, for I could not be sure of it.

Q. Is there a bell at Fort Point?

A. Yes, sir.

Q. Was that bell ringing at that time?

A. Started at 3 A. M. and stopped at 1 P. M. the next day, ringing all the time. 1:20 P. M.

Q. Were you not at the bell the first time?

A. I was within sound of it.

Q. But not at the bell?

A. No, sir.

Q. You were not on the Fort?

A. No, sir; I was up on the bluff above it, about 60 feet to the south from the fort.

Q. Did you see the fort from where you were?

A. I could not see the fort; I couldn't see the flagstaff about a minute after. And first I looked down the road to see if I could see the man that was going to the telephone station, to judge the distance, because I thought the inspector would ask me. It is measured; there is 700

yards of range measured off there for shooting, and one-half that distance I could not see the man, and then I looked over towards the fort to see whether I could not see the flagstaff, and I could not see it; and at times the fog would clear a little so you could see clearly for some distance, say a mile, and then the fog would shut down for fifteen minutes and I could see up as far as the city along the shore. But a little off from the shore it was quite foggy. But at the time of the collision, about one minute after the collision, I could not see the flagstaff 200 feet off. I looked to see if I could see the boy, and I couldn't see him.

Q. How far off were you from the boy?

A. About a cable's length, about 120 fathoms.

Q. 600 feet.

A. About that.

By the Court—Q. 730 feet.

A. Yes; 730 feet.

By Mr. White—Q. How distinctly did you hear this noise of the crash and collision?

A. Well, it was pretty distinct, but then I felt—I wasn't quite sure whether I had better send for a tugboat to send out there for nothing. Then I came to the conclusion it was better to telephone right in. I knew there was nothing else but the two vessels coming together to make this noise in that direction, and hearing the whistles go, I determined to be on the safe side, and I telephoned to the Merchants' Exchange. It wasn't very distinct, but still I could hear the crash, and I could hear voices, but not very much of an uproar of voices. I could hear a few voices muffled—a muffled sound.

Q. Could you tell from the whistles they sounded, and from the noise made by the collision, how far off in the channel they were?

A. I could not; I could not be sure.

Q. Well, what was it, according to your judgment?

The Witness—When the collision happened?

Q. Yes.

A. I would judge, drawing a line from Fort Point to Lime Point, I would judge it to be one-third of the distance across, and about one-quarter of that distance towards the city.

Q. Towards the east?

A. Yes, sir.

Q. You think, drawing a line from Lime Point across to Fort Point, that it was about one-third of the distance across there and a little inside that line?

A. Yes, sir.

Mr Barnes—Well, mark the place, will you?

(Witness then marks said place with small cross and R).

(No cross-examination).

FERDINAND WESTDAHL. Called for the plaintiff and sworn, te-tified as follows:

By Mr. White—Q. What is your official position?

A. I am a draughtsman in the United States Coast and Geodetic Survey.

Q. And you say you are also an expert mariner? At least, you have a Master's license?

A. Yes, sir; I am educated for a Master Mariner.

Q. So that you are familiar with matters of navigating ships?

A. Yes, sir.

Q. After this collision occurred between the Oceanic and the City of Chester, did you take any steps to locate the Chester?

A. Yes, sir.

Q. What did you do, and what did you discover?

A. I was sent out there by my official superior, Professor Davidson, of the Coast Survey, to experiment upon the force of the current in the Golden Gate; and it was at the request of Captain Wallace, of the City of Chester, that we went out in a tug and made three drifts in the Golden Gate, stopping the tug at a certain position and letting her drift; and I determined her position for every minute of the drift. We drifted each time eight minutes. I don't remember what interfered with the operation the first time we were out there, whether it was foggy or not. I am not quite sure. At any rate, we didn't finish and went out some time afterwards and tried it again in another steamer, the Gypsy.

Q. That is, another tug?

A. No; she is a steamer. The Gypsy is not a tug; she is a steamer. And we swept along the bottom with a line weighted with grate bars and window weights until we finally caught on to what we supposed was the City of Chester, the wreck of her. I determined where she was then, or what we supposed was the City of Chester, where it lies.

Q. Well, now, I have here one of the charts that General Barnes has been so kind as to furnish. Have you done any work on this chart in reference to this?

A. I found my old notebook, the notebook that I used

in the work, and I have plotted on here the position of the tug for every minute's time. The first drift is thus represented by the red lines; the tug was brought out here (showing), stopped, and when she was at a dead stop, couldn't go any further, or, rather, didn't go any further, we left her drift, and the first minute she went from there to there (showing), the third minute from there to there, the fourth from there to there, the fifth from there to there, the sixth from there to there, the seventh from there to there, and at the end of the eighth minute she was here (showing).

Q. Now, what time was that in the day?

The Witness—Can I refer to my note for that?

Mr. White—Yes, sir.

A. (The witness referring to notes)—It was on September 5th, at 10 hours, 10 minutes and 30 seconds. First, when the angle was taken, 19 minutes and 30 seconds; the second, 20, 30; then 21, 30; 22, 30; 24, 30; 25, 30; 26, 30; 27, 30; and that was the end of the first drift.

Q. Now, I will ask you why you went out there on September 5th?

A. It was to get the same conditions of the tide as on the day of the collision.

Mr. Barnes—I move to strike that out; let him state what the conditions of the tide were.

The Court—Strike it out. State what the conditions of the tide were.

A. The tide was flood.

Q. How long?

A. It was about half flood. Can I refer to the records

for it? That is the only way I can determine it, by the records of the tide.

By the Court--Q. What records do you mean?

A. These tide books (witness produces tide table). The tide here is given for North Point; the tide, of course, makes a little earlier here, probably ten minutes; but that is such a small factor that it would not operate upon, or effect this in any way. Now the collision occurred on August 22d.

The Court--You just give your tide when you went out there.

A. On September 5th it was low water at 4:40 A. M., and the following high water was at 11:29 A. M.

By the Court--Q. What time were you out there?

A. I was out there at 10 o'clock; it was more than half tide.

The Court--Oh, yes; it was nearly full tide.

A. Yes, sir.

By Mr. White--Q. Is that an official document?

A. Yes; that is the tide table, the predictions of the tide made by--

Q. (Interrupting). Well, now, turn to August 22d and see what the facts were then as to the tide.

A. On August 22d it was low water at 5:53, and the following high water was at 12:53.

By the Court--Q. Did you take a drift that day?

A. No; that is the day of the collision.

Q. But then this collision was in 1888.

A. Oh, yes; this was in 1888.

Q. Was this September of that year?

A. Yes, of that year.

By Mr. White—Q. I want to ask you whether the condition, so far as your record shows as to the tides, whether the tides were practically the same on September 5th that they were on August 22d?

A. It was later in the tide.

Mr. Barnes—How does he know? He can't know.

Q. It was later in the tide, and for that reason you took a later hour?

A. I went out there, and Captain Wallace had charge of the tug going out there, and at his request I went out there to make these experiments at the earliest possible time that we could get off. I remember it was foggy first and you could not see anything. I wanted to see the landmarks to take the angle and so we got out later in the tide on that account.

Q. Well now, when was the next time that you made a drift?

A. On September 10th.

Q. What hour in the day?

A. It was from 8 to 10 A.M.

Q. What kind of a tide was running at the time?

A. It was flood tide.

Q. By Mr. Shay—How far in the flood tide?

A. I don't know.

Mr. White—Q. How did that tide correspond with the tide on August 22nd?

A. If I can refer to the records I can see; otherwise I can't.

The Court—Well, state what you find in the records.

A. On September 10th it was low tide at 5:55 A.M., on August 22nd it was low water at 4:14 A.M., and on Sep-

tember 10th it was high water at nine minutes after 12. On August 22nd it was high water—excuse me, I got it wrong; I got San Diego instead of San Francisco.

Mr. White—Then that all goes out.

Mr. Barnes—Yes, strike that all out.

The Court—Let it all go out. Now get to San Francisco, and be sure that you have got San Francisco now.

A. Yes, I got San Francisco. On August 22nd it was low water at 5:53 A.M., and the following high water was at 12:53. On September 5th it was low water at 4:40 A.M. and high water at 11:29 A.M.

By the Court—Q. And your observation was taken that day at 10 o'clock?

A. On that day my observation was taken at 10 o'clock, beginning at 10:19. The second drift was made on the same day. All the three drifts experimenting with the current were made on September 5th, and on September 10th nothing else was done than to determine the position of the wreck.

Q. Was the second drift followed immediately after the first?

A. As quickly as we could steam back we stopped her again.

Q. And the third followed the second on the same day?

A. Yes, sir; the same day.

Q. What time did you get through with the third drift?

A. 10:56, thirty.

Q. That was extreme high water.

A. No, sir; the high water was much later than that.

Q. How much later than that?

A. High water was at 11:29. As a matter of fact, the drifts show a continual receding to the south shore; the three successive drifts.

By Mr. White—Q. All three drifts that you made there were made on September 5th?

A. September 5th.

Q. What were they made with?

A. With a tug.

Q. Now, it was at a different that time you located the wreck, September 10th?

A. Yes, sir.

Q. Have you indicated on this chart where you found the wreck?

A. Yes, sir.

Q. Where is it?

A. Right there (showing).

Q. Where is that, the forty-fathom mark?

A. That is the forty-fathom mark immediately to the southward of it.

A. Assuming, now, that six minutes occurred—

Mr. Barnes—It took eight minutes, he says.

Mr. White—Well, I am not taking eight minutes, now; I am taking six minutes.

The Court—Well, he has got them all marked on the chart.

Mr. White—Well, I want to measure from the wreck right the other way?

Q. Taking the point of the wreck as located by you, and assuming that six minutes elapsed from the collision until the steamer sank, and taking into consideration the way

that tide flows, at about what point would be the point of collision?

A. If the tide were exactly the same as it was at the time of these experiments, the vessel could not be there at all unless the collision occurred exactly one-third of the way from Fort Point over towards Lime Point, if not further.

Q. Do you say about that thirty-fathom mark?

The Court—No, fifty.

The Witness—It occurred up here, but these experiments not being carried out at the same state of the tide, the current sweeping across the gate here was not as strong, possibly. In other words, this was later in the tide when these experiments were made than at the time of the collision, as I understand it.

By the Court—Do you know anything about this tide up here (showing)?

A. The tide sets straight in, except, of course, immediately in shore, as the tide would strike against any point.

By Mr. Barnes—Q. I didn't understand what qualification you were trying to make in saying that the tide was not as strong at one time as the other. At which time was it stronger?

A. In the beginning of the flood it would set further over than it does in the latter part of the flood!

Q. So that at the time you made these drifts the tide was not as strong as it was at the hour of the collision, that being earlier than 10 o'clock?

Mr. Barnes—I object to that.

The Court—Yes; that is a matter for argument.

CROSS-EXAMINATION.

Mr. Barnes—Won't you be kind enough to mark upon this map, this duplicate underneath here, a position where you say you found the wreck on the 22d of September?

The Witness—On the 10th of September.

Mr. Barnes—Well, whatever the day was.

(Witness hereupon marks point on the map.)

Q. Now, did you take the depth of the water in which she lay?

A. No, sir.

Q. Then you are unable to state to the Court at what depth of water you found her?

A. Not except where it puts the position on the chart.

Q. I am asking you if you know the exact depth of the water she was laying in?

A. I don't remember that we took the depth of water.

Q. What bearings did you take to determine her position?

A. I didn't take any bearings; I measured angles.

Q. How did you fix her there then?

A. By measuring sextant angles between Alcatraz and Lime Point, the whistling buoy and Bonita Light.

Q. Supposing the position of the ship is, in point of fact, not there (showing), but here, indicated by the conjunction of these three lines, this line contracted from Point Bonita, passing Point Diablo, and extended to here, then across to Point Bonita here, and then across to the south to this place (showing on the map), where would you say, assuming the ship to have been found at the point marked "B." on the map, where, according to your experiments with the currents, did the collision occur?

Mr. White—Assuming also that it occurred six minutes before she sank, that she kept afloat six minutes?

Mr. Barnes—Yes, sir.

A. Well, if that is the case, if the ship should lie there, I should think that the collision had occurred here, somewhere (showing).

Mr. Barnes—Won't you just make a little mark there? (Witness marks place on map.)

The Witness—That is simply a judgment of mine.

(Further hearing continued until 10 o'clock Wednesday A. M., September 13th, 1893.)

WEDNESDAY, September 13, 1893.

MRS. ELIZA A. SMITH, the plaintiff. Sworn.

Mr. White—Q. You are plaintiff in this case?

A. Yes, sir.

Q. Where do you live, Mrs. Smith?

A. Sacramento, California.

Q. What was your late husband's name?

A. Henry Smith.

Q. Were you and your husband and children on board the "City of Chester" on the morning of August 22d, 1888?

A. Yes, sir.

Q. Go on and state to the Judge from the time you went on board that vessel up to the time that the collision occurred, and afterwards, what did occur, so far as you saw and heard?

A. Well, I don't know what time of day it was that we got on; we took a second class passage, and we were on

deck at the time and had been. At one time we went down to get a drink for the children. The rest of the time we were up on deck. There was nothing particular to speak of, as I know of, until we heard this other vessel whistle, and then we turned to look at that and see it. From the time I first heard the vessel until it collided with our steamer, I did not have any idea of any danger. I did not think anything about it striking us, although I thought it would pass very near. My husband was there right with me. We were sitting this way, with the three children and my sister. That was all; my husband with the three children and my sister and myself.

The Court—Q. Which side of the boat were you on going out?

A. Very near the front part of the boat. There is a raised portion there very near the center. We were sitting on that looking back from where we started, until we heard the whistle. Then we stood and looked back the other way, to see this boat coming towards us.

Q. What was the condition of the weather? Was it clear or otherwise?

A. Most of the time it was clear. There was some fog at times; not so but what we could see the other steamer all the time after I heard the first whistle.

Mr. White—Q. Could you see any land?

A. On the left hand side I could see it plainly; off that side (pointing).

Mr. Barnes—Q. The land or the ship?

A. The land and the ship, also.

Q. Which way do you mean by the left hand side?

A. The way we were going when I turned to look at the other side.

Mr. Barnes—Q. Ask her where she stood.

The Court—Where were you standing?

A. This is the "Chester," and we were somewhere here (pointing).

Q. On this upper deck?

A. Right here (pointing). As near as I know, we were in front of this bridge. We were right here sitting on a portion that was raised. We were looking off in this direction. We were sitting there facing this way, and when we heard the other steamer's whistle, we turned directly round and looked in that direction. This is where I saw the land, off to this side.

Mr. Barnes—Q. Where did you see the steamer?

A. Off there.

The Court—Q. About this way?

A. No, sir; a little to this side.

Mr. White—Off to the front and a little on the left hand side.

A. Yes, sir.

Q. Where was the land?

A. Right off here—the south shore.

Q. Can you tell how far off the land was from you?

A. I could hardly measure the distance on water. I don't know as I could hardly tell. I am not used to being on water.

Q. Which was nearest to you when you saw the other steamer, the land or the steamer?

A. I think the land was nearest. The land was nearer than the other steamer when I first saw the steamer.

Q. The land was nearer than the other steamer?

A. Yes; sir.

Q. Were either of the steamers surrounded by fog at that time?

A. Not when I first saw them they were not.

Q. Were they at any time?

A. Not so but what I could see them. There was some fog settled over the other steamer and kind of drifted down between the two. I could see the steamer all the time after I first saw it.

Q. After you saw the steamer, go on and tell what occurred.

A. We looked right off in that same direction and watched it until it came up. When it got very near to me, my husband said, "step back." We stepped back to this opposite side near the rail.

Q. Over on the other side?

A. Yes. When it struck we started for the other steamer and got over into the other steamer.

Q. Tell us just what did occur, about your getting on the other steamer.

A. When we first got there, my husband was very near to me—nearer than I am to you. We were all right there together. I had my little boy in my arms. He was a year and a half old—a little baby. I handed him up to someone on the other steamer.

Q. He was only a baby at that time?

A. Yes, sir. My husband had the other two children by the hand. I was taken over. I don't know whether my sister got over ahead of me or not. I did not see her get over. I was taken over. I was dropped down among

the freight on the other steamer. I climbed up to see where my husband was. I suppose he got right over after me. I climbed up to look over the edge of the steamer. I saw him back of a circle of may be two or three dozen people, with the two children in his arms. I heard Georgie, the boy, screaming. I started to see where he was, and when I looked again the other steamer had sunk.

Q. That was the last you saw of your husband alive?

A. Yes, sir.

Q. Afterwards his body was found and you identified it fully?

A. Yes, sir.

Q. Your little girl Myrta you never did see again?

A. No, sir.

Q. How old was she at the time?

A. Four years and a half.

Q. What was her condition of health?

A. Good health.

Q. How old was your husband?

A. Thirty-two years.

Q. How long had you been married?

A. About five years and a half.

Q. What was the condition of your husband's health?

A. In first-class health, splendid health.

Q. What was his business?

A. He had just given up the dairy business; he had been in the dairy business.

Q. The keeping of cows and selling of milk to the inhabitants of the city of Sacramento?

A. Yes, sir.

Q. Now, I desire you to give the Judge some knowledge of your husband's ability as to providing for his family. Can you tell how much from his own exertions your husband was in the habit of making per year?

A. I could not tell exactly, but I might make some estimate of it.

Q. Give the best knowledge that you have on the subject.

A. Well, he supported the family—himself, myself and three children, my father, my sister, and perhaps maybe from \$50 to \$75 a month over that, as near as I can tell.

Q. How much were the family expenses per month?

A. It must have been, as near as I can tell, from \$75 to \$100 per month.

Q. What property, if any, had your husband accumulated from the time of your marriage up to the time of his death?

A. He had some land in partnership; he owned half of it; 160 acres of land, about 45 head of cows, and about 10 or 15 head of horses, — mules.

Q. Did he have any money?

A. Yes, sir, he had some money; he had some on his person when he was lost.

Q. How much did he have with him, if you know?

A. He had very near \$500 as near as I know.

Q. That you never saw anything of again?

A. No, sir; besides that he had farming implements and hay and cattle.

Mr. White—It is not pertinent to this case, but some ghoul robbed the body of this money.

Q. About how much was all this worth?

Mr. Barnes—I take it that these horses and mules and land and farming implements were not lost?

Mr. White—No.

Mr. Barnes—Then what is the point of it?

Mr. White—I do not offer it as showing they were lost.

Mr. Barnes—Then what is the object of it?

Mr. White—A certain amount of property that he had at the time of his marriage, and a certain amount he had at the time of his death. The difference was what he accumulated in those five years and a half in addition to supporting his family. I offer it as some evidence, it may not be very strong, of showing the ability of the man in the direction of accumulation of property, tending to show his worth.

The Court—She has already testified as to the amount of his income from the business he was engaged in. That is direct. Now you propose to give indirectly his income by the amount of his property that he had five years before and then the amount that he had at the time of his death; is that the idea?

Mr. White—To some extent. It is in the nature of what might be asked to test the credibility of the witness or the knowledge of the witness on cross-examination. I have a right, I think, to go into the particulars. After the witness states a general conclusion, I have a right to go into particulars to show that necessarily that is true.

The Court—If General Barnes makes no objection, the Court will take it; but there are so many elements of increase in the value of the property.

Mr. Barnes—It cuts no figure, and it is wholly immaterial. I am willing that the lady should say anything that she wants to say.

The Court—Go on; the General will not object.

Mr. Barnes—No; but it cuts no figure whatever in any assessment of damages.

A. I can hardly tell without estimating it; I don't know without counting it up.

Mr. White—Q. Count it up; take a piece of paper.

Mr. Barnes—Q. How much do you say he made after his marriage?

Mr. White—Q. Above expenses?

Mr. Barnes—Yes; he had been making from \$50 to \$75 a month over and above his family expenses ever since their marriage, and they had been married five years and a half. What more do you want?

The Court—How much do you say he accumulated during the five years?

Mr. White—He made about \$50 to \$75 per month above the family expenses.

Mr. Barnes—We do not want to go into an inventory of his mules, horses and live stock.

Mr. Barnes—No questions.

Mr. White—There were a few questions that I omitted to ask Captain Wallace yesterday. I should like to ask them now.

The Court—Very well; let him take the stand.

THOMAS WALLACE. Recalled.

Mr. White—What was the speed of the "City of Chester" when she was going at full speed?

A. About 10 knots ; ten and a half at the outside.

Q. You said yesterday that she was slowed down before this collision occurred ; slowed down, as I understand, about the Presidio or earlier than that. After she was slowed down, and from that time until you again changed her rate of speed, what speed was she going at ?

A. Going along probably about 6 knots when we stopped her ; five and a half to six knots when we rang the bell to stop and go back.

Q. That is 6 knots through the water, without taking into consideration the tide at all ?

A. Through the water.

Q. Do you know at what rate the flood tide runs in when it is in a condition it was at the time you were going out that morning ?

A. It runs from 5 to 6 knots.

Q. Then you were going out at about 6 knots, and when you struck the tide against you, you struck the tide of about 5 knots, or 5 or 6 knots ?

A. Yes, sir.

Q. How fast were you going after you had slowed your steamer up to the time that you heard the first signal from the "Oceanic," as compared with the land ?

A. I must have been passing by the land about 4 knots an hour. There was probably a tide running 1 knot against us ; $1\frac{1}{2}$; something like that.

The Court—Q. What do mean by inside ? Inside the buoy ?

A. That is the way I understand the question.

Mr. White—Q. You mean inside the point here (pointing).

A. Yes, sir.

Q. Before you struck this hard tide ?

A. Yes, sir.

Mr. Barnes—No questions.

E. S. TALBOT. Called for the plaintiffs. Sworn.

Mr. White—Q. What official position, if any, do you hold ?

A. Inspector of Hulls.

Q. That is Inspector of Hulls of steam vessels under the United States Government employment ?

A. Yes, sir.

Q. Have you ever been a mariner ?

A. I have.

Q. Are you familiar with the navigation of ships and with the rules of navigation and the laws of the United States relative to the control and government of ships ?

A. Somewhat

Q. Does your official position make you study those matters ?

A. It does. In the first place I would like to object to testifying, if possible.

The Court—Q. On what ground do you object ?

A. Being connected with these cases—having these collision cases coming before me. I get abuse enough without coming up here to testify.

The Court—We all have to suffer abuse. What do you propose to prove by this witness ?

Mr. White—I propose to use him as an expert witness to ask him, like in the English cases they do the elder brethren of the Trinity House, to state a hypothetical

question to him, and upon that hypothetical question to take his opinion as to whether or not the management of these ships was a proper one or whether there was any fault or negligence on the part of either or both.

The Court—I do not think that is admissible under our practice. The practice prevails in England. They sometimes refer cases to Brethren of the Trinity, but that is not the practice here.

Mr. Barnes—Your Honor is aware that before the witness and one of his associates, as Inspectors, there was a hearing with reference to Captain Wallace. They took testimony, sitting as Inspectors, and acting quasi judicially they made a report to Captain Lubbock, who is the Chief Inspector. As I say, there is manifest impropriety now in calling the Captain here as a witness to put to him a hypothetical case based upon a hearing in point of fact had by him long ago, in which as a Judge he had made up his mind, and made a report. Now, his report would certainly not be admissible in evidence in this case, either as an expert or otherwise in controlling the judgment of this Court, and as he says himself, his position is one where he ought not to be compelled to testify in respect to a matter which he has already committed himself to. I do not mean anything disrespectful in the term, because I have a high respect for the Captain, but where his views have been already crystalized into the form of a report to a superior officer, he is certainly the last person who should be called here as an expert to advise the Court. I believe the Captain to be thoroughly qualified for his duties as Inspector of Hulls, and he has the respect and confidence of the community, and of all men who deal

with him. There is no doubt about that, but the method in which he is proposed to be used here, I think is not fair to the parties, nor fair to the Court, nor even fair to the Captain himself, and I object to it.

Mr. White—The objection made to the examination of Captain Talbot is not really in the nature of a legal objection, but is pointed to the good taste of myself in thus calling him as a witness.

Mr. Barnes—No.

Mr. White—That is a matter that I have to allow people to have their views concerning, whether it is counsel on the other side, or Captain Talbot himself. It is unpleasant for me to call Captain Talbot as a witness, but from his official position, and I will admit frankly, from the fact that the evidence was taken before him in this case, and that evidence is strong in favor of the "Oceanic," if not more so than the evidence that has been produced here before your Honor, it has led me to call him as a witness. The case is substantially the same.

Mr. Barnes—We do not think so.

Mr. White—That it was before him, while he was passing judgment then as a judge. I call him now as an expert in navigation, required to be expert, I think, as I understand it from his official position. He cannot get the position, as I understand it, without he is an expert. It is a mere matter of good taste whether I shall call him or some one else. The suggestion made by your Honor goes to an entirely different proposition, and one upon which it is not left for me to rule upon the question of the good taste in this matter. There is one ruling which I can make in this Court for myself. Upon the question of

the right to call expert witnesses, however, I desire to be heard, and I can produce to your Honor a long line of authorities. I have some seven or eight of them noted here that are referred to in the work called *Rodgers on Expert Testimony*, page 299, in which it is held, and I have found no decision to the contrary: "The opinion of persons engaged in the navigation of vessels are received on questions pertaining to nautical science. Such opinions have been received on the question of the possibility of avoiding a collision by the use of proper care on the part of one of the vessels, and as to the proper management of a ship, and whether on the evidence he was of the opinion that the collision could have been avoided by proper care on the part of defendant's servants, and whether a vessel on entering a harbor was skillfully handled." I cite:

- Rodgers on Expert Testimony*, 299;
Solz vs. Morris, 17 N. Y. Sup. Ct. 202;
Western Ins. Co. vs. Tobin, 32 Ohio St. 77;
Ginteman vs. Liverpool, etc., S. S. Co., 83 N. Y. 358;
Hill vs. Sturgeon, 28 Mo. 328;
Union Ins. Co. vs. Smith, 124 U. S. 405;
Fenwick vs. Bell, 1 C. & K. 312;
Ward vs. Salisbury, 12 Ill. 369.

Mr. Barnes—I wish to correct an impression that grows out of the counsel's infirmity rather than from anything I said. I did not assail either his good taste or his bad taste. I think it proper to observe I made no personal comment at all on the counsel calling the Captain as a witness. The point I make is this, that it is precisely as

though a case were pending in the Circuit Court, a portion of which had been tried before your Honor, and your Honor had come to a conclusion, and you should be called as an expert witness in the Circuit Court to testify to what your conclusions were on a case tried in this Court. Now this gentleman is not here in the capacity of an expert witness at all. He says he proposes to propound a hypothetical question to him. What is the object of that? It is to call some man disinterested, unprejudiced without conclusion already arrived at in his mind, to state to him a condition of facts involved in the case in hand, for the purpose of obtaining his opinion upon a given point which may aid the Court in coming to a conclusion. Now, I submit it is not fair. It is not right that a gentleman in the position of the Captain, who has already sat as a Judge appointed to decide a proposition under the law, and who has already decided it, should be called as an expert witness to state the conclusions at which he arrived in a given case for the purpose of aiding this Court in coming to a judgment. That is not the object and function of what I understand to be an expert witness, and he ought not to be called. I am not talking about the question of taste. He ought not to be permitted to be examined as a witness in respect to a matter concerning which he has already acted as a Judge. That is the proposition.

Mr. White—Your Honor may not quite understand the situation. Captains Talbot and Hinman did not sit as judges in this matter, so far as concerns the conduct of the "Oceanic." They expressly disclaim having any jurisdiction whatever over the "Oceanic" or her master or her pilot. They were investigating the question

to determine whether or not Captain Wallace of the "Chester" and the management of the "Chester" was negligent, and what they learned regarding the "Oceanic" was necessarily learned by them in the examination in the taking of the testimony, but it was not a matter on which they were acting judicially, because, as I say, they disclaimed having any jurisdiction over the "Oceanic" or her master or her pilot, and did not in fact have any jurisdiction over them; so that Captain Talbot has not acted as a Judge passing upon the conduct of the "Oceanic." Now, this case in the 124th U. S., the case of the Union Insurance Company *vs.* Smith, found at page 405, is as follows; I read from the syllabus: "Expert testimony as to whether, under the circumstances, it was the exercise of good seamanship and prudence to attempt to have the vessel towed to Cleveland was competent." The Court says but little on that point, and I will read it. It is found on page 423, "It is also objected that the testimony given by the five witnesses above mentioned was not the proper subject of expert testimony; that under the policy in this case the proper inquiry was not as to the prudence of the captain in passing Port Huron, ; and that if the vessel was, as a matter of fact, unseaworthy, either because of her rottenness or her unnavigability, or the broken and leaky condition of her stern, and if the loss was occasioned by unseaworthiness, the defendant was not liable. But we think that the testimony referred to was competent, in view of the questions the jury were to consider, as properly laid before them by the Court in its charge, to be considered hereafter." I will see if I can find the exact question that was asked these witnesses. Q. The plaintiff himself,

as a witness, was asked whether, on the facts of the case, detailed to him in the question, it was the exercise of good seamanship and prudence when the vessel reached Port Huron to continue right on, to bring her to her home port of Cleveland. He answered that he would consider it good seamanship. The calling or profession of navigating ships is one that is peculiar. The knowledge of how to navigate ships and what ought to be done is not one that is known to men in every day life. It is not one that the Court would take notice of or the jury take notice of in their own knowledge. It is a high calling, requiring as long a time to serve in order to master all the different intricacies of it as the profession of medicine or law, and much longer than that of the ministry. It is something that a farmer or merchant or a physician, or other person in the ordinary avocations of life on shore might know little or nothing about. Without being egotistical at all, I say that I know something about the ordinary forms of procedure in the Courts of the State of California, and legal decisions, and I have picked up a good deal of outside information that is useful to me, but the way I have stumbled along through this trial, after attempting to post myself in order to be prepared for it, shows that a person on shore who has never had opportunities to obtain information of nautical matters, necessarily can be much assisted in having the opinions of experts, and I take it, it would be very much the same with a Judge on the Bench as it would be with the average attorney, except that the Judges are men of selection from the body of the Bar. If your Honor is of the opinion that you are fully advised in regard to the rules and laws of navigation, so that witnesses would not give

you any information except that which would be a repetition of what your Honor already possesses, there is no necessity on our part to call expert witnesses.

The Court—The Court will not make a ruling on that hypothesis. The Court may not know the rules or the laws governing navigation, but before a case is decided the Court must try to know. Before this case would be decided, it would be incumbent on the Court to be thoroughly informed as far as possible of the rules and regulations governing navigation as they are in the law and provided by the regulations.

Mr. White—I do not ask the witness to post your Honor as to the rules of navigation, but to give his opinion on certain conditions of fact whether those rules apply.

The Court—You apparently avoid the difficulty that was mentioned by the Supreme Court in the case of the “Charles Morgan,” with which you are doubtless familiar. In that case the offer was to introduce the opinion of the Board of Inspectors who had investigated the collision. You avoid that by now proposing to submit him to a hypothetical question, but still behind it all rests the objection that the Supreme Court made to the testimony in that case. In that case the finding of the Board of Local Inspectors was properly excluded, says the Supreme Court. “The proceeding in which the finding was made was instituted under Rev. Stat., Sec. 4450, for an investigation of the facts connected with the collision so far as they had a bearing on the conduct of the licensed officers on board the boats, and at most it only showed the opinion of the board upon the subject from the evidence adduced before them.” That

would be substantially the result that we would arrive at in this case. You may say you avoid that by presenting a hypothetical question, and at most all you will get from this officer is an opinion. That is what was objected to in that case. The Supreme Court says: "It was offered, to use the language of counsel, as tending to affect the evidence offered by the libellants to show that the Cotton Valley was in her proper position in the river, and had proper watches and lights set at the time of the collision. Clearly it was not admissible for any such purpose." I am aware there is a line dividing expert testimony from the testimony of an officer of the character that this witness appears to be, and you are endeavoring to avoid that complication. I suppose you are familiar with the case of the "Morgan"?

Mr. White—No sir; but that proposition is perfectly plain to me as your Honor reads it from the opinion.

The Court—As suggested by General Barnes, it would not be proper to the Circuit Court to call upon the Judge of this Court, or for this Court to call upon Judge Ross. In the same way you might call Judge Ross, who has investigated collision cases and is familiar with the law, or should be, and ask him to come into this Court and give his testimony as to what in his judgment was the law which would govern a case of that kind. That would be taking away from this Court a responsibility which it must accept and must discharge. This Court must determine, whether rightfully or wrongfully in the judgment of the Court, the law that governs such matters, and the regulations, and it will be improper for this Court to have Judge Ross, if in town, placed upon the stand. Suppose, after

you get through, General Barnes should call Judge Ross and recite to him the evidence up to this moment, and ask him if on that state of facts any one of these persons were at fault. While you might not be able to state distinctly the rule that would exclude him, it would appear to every lawyer that that was wrong. These inspectors have a duty to perform under the law, under which they have just as much obligation as this Court in discharging its duty. The Supreme Court has excluded the opinion of these officers. Is not that what you are trying to do now, to get the opinion of this officer?

Mr. White—Not necessarily. I say that my view of this testimony is that it is substantially the same as was produced before these Inspectors, but General Barnes may take an entirely different view of that, and your Honor may take an entirely different view of that. Without going into the question or looking at all into the question of what was produced there, your Honor may take a certain view of this testimony that is not in harmony at all with the view they took of it. It is open to General Barnes to cross-examine my witness, and to put such hypothetical questions based on what he contends are the facts proven at this trial as he sees fit to. I expressly disclaim having any right to pick up the copy of their decision and introduce it in evidence. I know I have no such right as that. If I offered such a thing, and your Honor was willing to admit it in evidence, and the other side objected, I would promptly withdraw it, because I know that that would be error in the case, but it seems to me this case is more like it would be if Judge Ross was called before your Honor to testify in regard to some

foreign law with which he was familiar, to prove the existence of that foreign law, and what it was, by calling a witness that had knowledge of that law. These Inspectors tried no case against the "Oceanic;" they tried no case against Captain Metcalfe or Pilot Meyer, and did not have jurisdiction of them. All that they obtained relative to them was obtained by them incidentally in trying the "Chester" and Captain Wallace, and while it may not be good taste, did the fact that they investigated that question disqualify this expert from being a witness? If it did, I know of no rule under the statute, nor in any decision, because my contention is that the decision your Honor has read has no application whatever. They did not call the witness. I know of no statute or decision which disqualifies an expert because he has obtained some knowledge of the facts, from testifying. It is within the province of the other side so to frame their questions or to obtain a direction from your Honor that this witness in testifying shall leave out altogether all testimony all consideration of what he heard in the examination of witnesses before him in regard to this matter, and leave out of consideration altogether the judgment that he then exercised. The question is, Has this witness disqualified himself by reason of his official position? I contend he has not, and there is no rule of law, either statutory or by decision of the Court, that disqualifies him, because he has already made some examination of these facts, perhaps made an *ex parte* examination of them, so that questions put to him based on the real facts in this case as they have developed at this trial, may produce an entirely different answer from him than would accord at all with the judgment he

expressed in passing on the question whether the "Chester" and Captain Wallace were guilty of negligence. I expressly disclaim having any intention of introducing directly or indirectly the judgment that Captain Talbot, in connection with his brother inspector, rendered upon the trial of the hearing of Captain Wallace.

Mr. Barnes—I do not desire to take up any more time in discussing this question than is essential, but it seems to me that the counsel has not met the question at all. Here is a public officer, who under a section of the Revised Statutes of the United States, which I call your Honor's attention to, is made a Judge. He acts. On such lights as he has, he makes a report. I do not desire to accuse the counsel of misrepresenting intentionally what these gentlemen did in that report, but he has made a mistake. They did make a finding, both as respect the "Oceanic," both as respect the pilot and master of the "Oceanic." What that was, either as respects them, or the ship or Captain Wallace, it is not material now to inquire. He disclaims any intention, but whether he does or not, they belong to the class of intentions that are not entitled to very much respect. He calls this gentleman, an expert witness, to get from him an opinion which he presumably has not changed in a case which he has already tried. In other words, he says he knows that the Supreme Court of the United States has decided that the former report and conclusion and evidence taken by them is totally inadmissible, and for the very best of reasons. He, in effect—of course, I concede his perfect innocence; I concede he is as pure as snow in his purposes, but he will accomplish his hellish purpose all the

same if he is permitted, instead of offering this document signed by Captain Talbot and Hinman, to put those judges on the stand to ask them their conclusion and to advise this Court as an expert witness. That such a thing as that is possible, in view of the law and the common sense of the thing if there were no law about it, must strike every reasonably intelligent person with a sense of its utter and complete unfitness in a tribunal such as this.

Mr. White—This is an important question, and I desire to present such lights as I can to your Honor, especially in view of the intimation your Honor has given me.

The Court—I think, Mr. White, there are one or two other decisions that I have not got here, one of the case of the “Utah.” I think it would be a saving of time by your withdrawing this witness and putting some other witness on the stand until I have had an opportunity of consulting one or two of the authorities. I think the question has been really determined by one of the courts.

CLITUS BARBOUR. Called for the plaintiffs. Sworn.

Mr. White—You are an attorney at law in the city?

A. Yes, sir.

Q. You were on board the “City of Chester” at the time of her collision with the “Oceanic” some five years ago?

A. Yes, sir.

Q. Go on and state everything that came to your sight and hearing on that occasion.

A. As near as I remember, it was about 10 o’clock in the morning. I was about midships, I believe is the nautical phrase. I think I had a newspaper, either that or I

had been speaking to a couple of old tourists, who asked me some questions about points of interest on the bay, when I heard a furious racket on the boat, whistling

Q. Which side of the steamer were you on ?

A. I was on the left side, to the larboard side I suppose you would call it. I looked up and I saw apparently across the way, or across the bows, of the steamer I was on, the "Chester," a large steamship probably a couple of hundred yards away. The next I knew, we crushed into it. There was a dull thud, a bump, reminding me somewhat of the bumps that the ferry boats have when they strike the piers. The next thing I noticed was a lot of people swarming over into the big steamer, the "Oceanic," from our steamer, and I think they were the crew. I went forward then to where they were, and I saw a big gash cut into the "Chester," some 8 or 10 feet, I should think, and the people were going over the bow.

Q. The bow of the "Oceanic?"

A. Yes, sir. The "Chester" was sinking slowly all the time. When it got down to about, I should think, 10 feet, it was up to the top of the "Oceanic"—the "Oceanic" was anyway some 3 or 4 feet higher. When it got sunk down about 10 feet I concluded it was no use trying to go over there. I started back. I was going to get my life preserver. I noticed one in the room I had. I heard someone on the bridge above sing out, "put down the boats." I thought it was a very pious idea. In fact, I think the idea ought to be given at first to put everything down that is afloat. I could not find a life preserver, so I went and helped to get the boat down, which we did, and I got into it finally and was taken upon the "Oce-

anic." I went off afterwards by the Custom House boat, and by that means got to land again.

Q. Take these two models and describe the position of the two ships when they struck together ?

A. They were not crossways exactly. The big ship was coming down in this way. Supposing this is the channel out here. Our boat was in about that position, I think; not a quarter angle exactly but nearly. It appeared to me as if our boat was trying to run round the end of them and missed it and struck.

Q. At what rate of speed did the other steamer appear to be coming towards you ;

A. Under a very slow headway, as near as I can remember. I was looking closely at it, too; I did not think of any collision.

Q. You say you saw them about 200 yards apart ?

A. I should think they were about that.

Q. What was the weather, so far as the fog or otherwise ?

A. When we started off from the city here it was what you call a cloudy morning. On the bay there was some sort of a fog—a sort of a rising, falling fog.

Q. A drifting fog ?

A. Yes, sir ; it was not so bad but what I could see easily the shore.

Q. What shore ?

A. I was upon the San Francisco side. I did not notice the other. I saw the shore. I was pointing out to this old couple, I remember, the seawall, Black Point, the Presidio and some other things of that sort that they were inquiring about, which I could see at that time of

the morning. Whatever fog there was, was out beyond.

Q. About where did this collision occur?

A. I could not tell you exactly. All I know is, we must have drifted somewhat down, because at the time I got into the little boat, we were nearly opposite the Presidio. I think, though, it was nearly off Fort Point where the collision occurred. We must have drifted some distance down, because our little boat from when we put it down was within 50 yards of the "Oceanic," and it drifted away so that we had to paddle before we got our oars up and got started probably a couple of hundred yards. We drifted down that distance in our little boat.

Q. You say that you pointed out to this old couple the Presidio?

A. Yes, sir.

Q. How far off from the Presidio were you?

A. I think about half a mile. Your eye is deceived sometimes by looking over a level space, especially anything that is very high.

Q. Was that the last point that you pointed out to them, or do you remember?

A. I think it was.

Q. How well were you able to see that south shore?

A. Well enough to see the buildings, to see the wharf they have there; well enough to remark to some people as I got into the boat that I thought if I was a young man I would have been able to swim it without any trouble.

Q. As I understand, you did not look towards the north shore at all?

A. Not until I got on board the "Oceanic;" yes, I saw it too, afterwards. When the "Chester" went down

we were upon the opposite side from where most of the people had got down. We were at the left-hand side, the inside. There was only one other boat on the side I was, and not many people. None were lost on that side. When the "Chester" went down it left very little ripple of any kind, and we could look right across over a clear surface. My own notion was—it is somewhat confused in my mind, but it appeared to me further to the Saucelito shore than it was to this shore.

Q. It appeared to be further to the Saucelito shore?

A. Yes, sir.

Q. That was the time that the "Chester" went out of sight, and you looked from the boat that you were in that had been on the left-hand side, across over where the "Chester" had been?

A. Yes, sir; there was nothing there at all except these boats.

The Court—You were on the San Francisco side of the wreck?

A. Yes, sir.

Q. How far from the "Chester"?

A. We were right there where it went down; I suppose two or three rods away. I know I sprang off, and I had to swim may be a rod in my clothes to get to my boat. It raised up and pitched headforemost without any suck, or whatever they call it; any swell that was made. Immediately the surface was covered with a lot of furniture and stuff of that kind. There was an explosion just as we went off the "Chester" on board the "Chester," produced probably by the compressed heated air and the water around it. It was said that it had blown open the staterooms and

caused this furniture to be on the surface. We were there some time in the little boat before we started to row to the "Oceanic," and I was looking and the rest of us were looking to see if we could help any one or be of any service. We were fifty yards or more away from where these people were. They had gone off on the other side.

Mr. White—Q. Did you notice at all what was done on the "Oceanic"?

A. No, sir, I could not. I paid very little attention to what was going on.

Mr. Barnes—No questions.

Mrs. SARAH NYE. Called for the plaintiffs. Sworn.

Mr. White—Q. Where do you live?

A. Sacramento.

Q. You are a sister of the plaintiff here, Mrs. Elizabeth Smith?

A. Yes, sir.

Q. Were you with her and her family on August 22nd, 1888, when the collision occurred between the "Chester" and the "Oceanic"?

A. Yes, sir.

Q. Were you on the "City of Chester"?

A. Yes, sir.

Q. Go on and state, Mrs. Nye, all the facts about the collision.

A. We were all on the steamer and were looking at the San Francisco side and the scenery, it was so nice and clear. We were on top, looking around, and my brother-in-law says, "There is a steamer coming." My sister and I looked to see it. We could see it quite a distance off.

We heard it whistle. Before we saw it we heard the whistle. That is what attracted our attention. We watched the steamer until it came in sight, until it came close, very close, to us. I asked my brother-in-law—

Mr. Barnes—Q. Never mind what you said to your brother-in-law. Leave that out, please.

Mr. White—Q. Do not tell about the talk. Just tell what you saw and what happened.

A. The steamer came very close and my sister says—

Mr. Barnes—Never mind what your sister said.

The Court—Q. State what you did without repeating conversations.

A. I stood there at the rail, with my hand on the railing, looking at the steamer until it came very close, close enough that it did not seem to me like more than a half-block distance. I stepped back and it collided. I could see that they were going to come together and I stepped back, because I was very close to where it was going to collide. I stepped back a distance of about four or five steps when it struck. As soon as it struck I ran back and climbed over. I think I was one of the first one off after it collided.

The Court—On to the “Oceanic”?

A. I caught the rail of the other steamer on the broken rail of the “Chester.” I pulled myself up, with a little assistance from above, on the “Oceanic.” They helped me up. Then I was pushed back so that I fell down in a hole there among a lot of freight. When I picked myself up and got out of there I just could see the last of the steamer going down. It looked to me like an explosion. The water flew up. That was the last I saw of it until I saw my little nephew in the water, and I told my sister there

was the little boy. We could not see my brother-in-law or the little girl. He had a red coat on, and that was the way I could tell him.

Mr. Barnes—Q. Who picked the little boy up?

A. A Chinaman had the little boy.

Q. A Chinaman jumped overboard from the "Oceanic"?

A. Yes, sir; and held him by the foot when I saw him. He looked to me as if he had him by the foot.

Mr. White—Q. Did you see Mr. Smith after you got on board the "Oceanic"?

A. Yes, sir; I was with him to the very moment of the collision.

Q. After you got on board the "Oceanic," did you see him?

A. No, sir; I never saw him after I left the "City of Chester."

Q. How was the weather that morning, foggy or otherwise?

A. It was just as clear as it is to-day; a beautiful morning, except that there was a very thick fog at times; a little sheet of fog, then cleared off and was bright, and then a little fog again, but very little.

Q. Where were you on the vessel, which side of it, as you were going out, before the collision occurred?

A. I was on the left hand side as we were going out.

Q. Could you see the land on that side?

A. Yes, sir; I could see all the small boats along the edge of the water.

Q. How far were you from the land, or could you tell?

A. I could not tell, but I was not very far, because I could see all the small boats and see the people in them.

It could not have been more than, I think, half a mile. It could not have been that distance, I think.

Q. At the time when you first saw the big steamship, which was nearer to you, the land or the steamer?

A. The land.

Q. The land was nearer?

A. Yes, sir; much nearer. It seemed to be much nearer. It did not seem to me like more than two-thirds of the distance.

Q. Which land do you mean?

A. The land on the left hand side.

Q. Did you see the land on the other side?

A. I had seen it just before, but not at the time of the collision.

Q. At the time that you saw the land on the other side, which land appeared to be nearest to your ship?

A. The land on the left hand side.

Q. Was nearest to you?

A. Yes, sir.

Mr. Barnes—No questions.

The Court—Mr. White, what do you propose to prove by Captain Talbot?

Mr. White—To put a hypothetical question to him based upon the testimony introduced, and to ask him this question, based on the hypothetical question whether or not the management of the "Oceanic" was proper and whether or not there was, in his opinion, any violation of any of the rules of navigation, and whether or not, under those circumstances, any other thing could have and ought to have been done on the part of the "Oceanic" that would have prevented or tended to prevent the disaster.

The Court—In the case of the “Gratitude” *vs.* the “Utah,” in the 14th Federal Reporter, page 479, which was a case of collision, the Court considered this question of the testimony of inspectors, and in that case, as in the case in the Supreme Court, it rejected the report of the inspectors. At the same time, the Court made this observation: “It is proper to say that no weight whatever has been attached to the action of the inspectors, whose report was put in evidence and referred to on the argument. The rights of parties injured by collision cannot be affected by anything these gentleman may do in the discharge of their official duties. They may be called as experts to solve nautical problems, if competent for this service; in no other way can the Court listen to what they may do or say respecting cases of collision.” As I desire to avoid any question of error in this matter, I think I would be justified in following that rule and admit this testimony, so far as it may relate to a nautical question. With that limitation, you may call Captain Talbot.

Mr. Barnes—I made the additional point, which was perhaps not worthy of respect, that, so far as the navigation and handling of a steamship under the circumstances of this one, it is all provided by law. The regulations to take the place of the opinion of anyone on this subject, and the question is, whether these vessels did obey the law, whatever it was.

The Court—The Court will disregard this testimony if it intrenches in the least on the duty the Court has to perform. In regard to that your objection is sustained, but it is qualified as the Court in the case I have cited qualifies it. The Court will not permit the witness to testify

as to any proposition concerning laws and regulations concerning which the Court must decide.

Mr. White—I am willing to call no experts on either side, and stand by the rules, whatever they are.

Mr. Barnes—I am satisfied with that. I have no doubt that I could call a whole naval batallion to sustain Captain Metcalfe and the officers of the “Oceanic,” but I do not think it has any part in this case.

Mr. White—We will agree that no experts shall be called, and your Honor will have to struggle along without that assistance.

The Court—That is one of the difficulties pertaining to my position.

S. M. MARKS. Called for plaintiffs. Sworn.

Mr. White—Q What is your business?

A. I am an insurance secretary.

Q. What company.

A. The Pacific Mutual Life Insurance Company.

Q. How long have you been in the life insurance business?

A. 20 years.

Q. Are you familiar with the tables showing the expectancy of life?

A. Yes, sir.

Q. What according to the American Mortality Table would be the expectancy of life of a man in good health and 32 years of age? You may make use of your books and tables to help give that information?

A. Age 32. 33 years and 9-10 of a year, according to the American Table of Mortality.

Q. Can you tell what amount of money in spot cash would be required to purchase an annuity on such a life of \$1,500.

A. An annuity of \$1,500 payable annually during the life of a party aged 32, would cost in cash \$21,882.

Q. Perhaps it would be of more assistance to the Judge if you could tell how much money in cash is required to purchase each dollar of the annuity?

Mr. Barnes—That is simply a question multiplication; I am satisfied with his statement.

Mr. White—Then strike out that question. The Judge can find that out by dividing \$24,882 by \$1,500.

That is our case.

GEORGE TAYLOR TILLSTON. Called for the defendant.
Sworn.

Mr. Barnes—Q. You are a mariner by profession?

A. Yes, sir.

Q. You were the first officer of the Occidental and Oriental Company's steamship "Oceanic" on the 22nd of August, 1888?

A. Yes, sir,

Q. At that time how long had you been going to sea?

A. Twenty years.

Q. Do you hold a certificate?

A. I hold an English master's certificate.

Q. At the time of the collision between the "Oceanic" and the "City of Chester?" how long had you been first officer of the "Oceanic"?

A. About two years.

Q. Had you been occupied while in her in making a

voyage from San Francisco to Japan, China and return ?

A. Yes, sir.

Q. How long does one of those voyages take out from the port of San Francisco to get back here ?

A. Usually about two months.

Q. On the morning of the 22nd of August we understand that the steamship "Oceanic" was coming into this port from sea ?

Q. I call your attention to the bromide print of the "Oceanic" on exhibition here, and ask you what time you went on duty that morning, and to show the Court with the pointer where your duty called you and where you were.

A. I went on duty on the bridge at 4 o'clock.

Mr. White—As to the position these officers had on that ship I make no contention. The first, second and third were in the positions as mentioned by General Barnes in his opening statement. Captain, pilot, first, second and third officers, and fourth, if there was any, were in their positions.

Mr. Barnes—Q. Just state where you were.

A. I took charge of the bridge at 4 in the morning. We proceeded under easy steam towards the pilot ground. After receiving the pilot I went on my usual station coming in or going out of port, and stood forward, right here (pointing).

Q. On the whaleback ?

A. On the whaleback.

Q. How many men did you have with you there ?

A. I had about ten sailors and the carpenter. My

duty kept me there from the time the pilot has to come on board until the ship safely arrived in port.

Q. Where did you pick up the pilot?

A. Close to the whistling buoy. I heard it but did not see it.

Q. Louis Meyer was the pilot that came aboard?

A. Yes, sir.

Q. And he went on the bridge?

A. He went on the bridge.

Q. And took command of the ship as pilots do coming into port.?

A. Yes, sir, along with the Captain.

Q. From the time that the pilot came on board, in the neighborhood of the whistling buoy, what was the speed of the "Oceanic"?

A. I should imagine from where I stood that some time she was going very slow; at other times half-speed, just as the fog lifted or shut down thick.

Mr. White—I object to this as not being the best evidence. I understand there is an engineer's log kept, or ought to be kept. I understand from something that was said by someone that there was a record kept in the engineer's room of this vessel. I do not know whether it is required by law to be kept; I presume it is. Whether or not, it does appear that there was such a log kept; and this log ought to be the best evidence to show the speed of the vessel at different times.

The Court—Is there such a log?

Mr. Barnes—Q. Did you keep any log of the speed of the ship?

A. I did not.

Mr. Barnes—I called this witness for what he saw, and perhaps when I call the chief engineer of the “Oceanic” he may be able to tell what he did. I am calling this witness as any other witness would be called to testify to what occurred.

The Court—Proceed.

Mr. Barnes—Q. What was the speed of the “Oceanic” after she took the pilot generally? How did she come in?

A. Certainly not at not more than-half speed, and several times going slow and dead slow.

Q. Which side of the entrance to the harbor did you come in, the north or the south side?

A. The north side.

Q. What land, if any, did you see after you came to the mouth of the harbor from your point of lookout on the bow?

A. I heard Point Bonita fog whistle, but did not see the land, and I saw the loom of Point Diablo low down on the water.

Q. Between Bonita Point and Point Diablo, what was the speed of the ship with reference to going at full speed, or half speed, or slow, or dead slow.?

A. Dead slow.

Q. What was the state of the weather?

A. The fog had been pretty thick outside, but as we approached the entrance to the harbor it was clearing away.

Q. How far could you see in the fog? State the limit of distance, and the shortest distance as well—that is, if you could see two miles at any time, and if it was between

that and down to half a mile? State it how it was.

A. At what particular time?

Q. As you came in from Point Bonita past Point Diablo.

A. Before we got to Point Bonita, I should say we could see fully quarter of a mile, as we passed a big sailing ship lying at anchor. As we got inside from Point Bonita it cleared away, and I imagine I could see half a mile; and so it continued up to the time of the collision.

Q. Will you go on and state to the Court all you know of the doings of the "Oceanic" and the "Chester" from the time of passing Point Diablo, when your ship was going dead slow?

A. Shortly after passing Point Diablo I distinctly heard a steamer's signal fog whistle two or three times. That particularly drew my attention in that direction.

Q. What direction did that seem to come from?

A. About two points on the starboard bow.

Q. Two points on your starboard bow?

A. Yes, sir.

Q. You heard the fog whistle of a ship?

A. Yes, sir.

Q. Could you then see it?

A. No, sir.

Q. What signal, if any, was being given from the "Oceanic?"

A. The usual one-blast fog whistle.

Q. What then occurred?

A. I reported the signal whistle by bell to the bridge, which was answered. I then kept my eyes in the direction of the sound, and shortly after I saw a black object

issuing through the fog about two and a half to three points on the starboard bow.

Q. How far away?

A. From 600 to 800 yards. Directly I saw the ship coming through the fog I reported it to the bridge and got the answer all right. At the same instant two blasts were blown on the "Oceanic," and I heard the order given to put the helm to starboard; at the same time this other steamer answered with two blasts. I then turned my face away, thinking no more about it, because I felt confident everything would be all right, as I had some men working there.

Q. From the position in which these ships were at the time when the two blasts were first given by the "Oceanic" and answered by the "Chester," the "Oceanic" starboarding her helm and sending the ship to the left, if the "Chester" had then starboarded her helm and gone to the left, was there any danger whatever of collision between those vessels?

A. None whatever.

Q. What was the next thing that occurred?

A. She still seemed to approach in the same direction, when I again heard the whistle of the "Oceanic" blow two blasts, which was answered by the "Chester."

Q. Now then, if at that time, when the "Chester" answered the two blasts of the "Oceanic," she had minded her helm and gone to starboard, was there then any danger of collision between the two?

A. No, sir; I think she would have cleared.

Q. What happened?

A. She came in the same direction. It seeme to me as if the helm had been put to port.

Q. Why did it seem to you that the helm was to port?

A. Because he had given two blasts of the whistle, and starboarding his helm meant for him to go to the left.

Q. Which way was he going, to the left or to the right?

A. He was evidently steering to the right, keeping on that way. He kept approaching in that direction, and the ships were getting pretty near and I saw that a collision was inevitable. I told my men to stand back.

Q. Wait a moment. After the second two blasts were given, was any change made in the motive power of the "Oceanic?"

A. No, sir; not up to that time.

Q. When was any change made in her movement with reference to going astern. That is what I want to get at.

A. After the second two blasts were given and did not appear to be responded to by the approaching steamer.

Q. The blasts were responded to, were they not.

A. But the course of the ship did not correspond with the signal given.

Q. Then what did they do on the "Oceanic"?

A. I then felt excessive vibration, which I concluded at once was the cause of the engines being put full speed astern. Directly after that the ship collided, the bow of the "Chester" coming across the "Oceanic's" stem in that direction (illustrating). Immediately afterwards there was a great rush over the bow, and the first people, I should judge, was the crew of the "City of Chester." There was the usual panic, men and women scrambling and shouting. By this time a great number of people had

got on the "Oceanic." The ship then commenced to settle down forwards. By that time we had four boats down alongside the "Chester," all around the "Chester." She then took one plunge and disappeared, and I still saw there were a few passengers left on the deck. Our boats were busily engaged then in rescuing the struggling people in the water.

Q. What boats, if any, did the "Chester" have out?

A. I saw one boat was floated just as the ship disappeared.

Q. How many boats did you say you had out there?

A. We had four boats down before the ship sunk, and one boat directly after she disappeared; five boats in all.

Q. As you passed Point Diablo, can you give the Court any idea of what the distance from the "Oceanic" to Point Diablo was?

A. I should imagine from the state of the fog that it would be a quarter of a mile.

CROSS-EXAMINATION.

Mr. White—Q. After the first signal was given by the "Oceanic" and answered by the "Chester," you turned away to some other duty, did you?

A. I turned my face away from the ship.

Q. What was it that you were doing?

A. Just simply looking to see that the anchor was all ready.

Q. Preparing to cast the anchor when you got into port?

A. Yes, sir.

Q. How long was it after that before your attention was again called to the "Chester"?

A. Probably not more than half a minute.

Q. After the time that you first saw the "Chester" what appeared to be her position towards the "Oceanic"?

A. She was coming at an angle of about two and a half to three points on the starboard bow.

Q. What direction was the "Chester" taking, or could you tell?

A. She was taking the direction to come in two and a half points from ahead of the "Oceanic."

Q. Was she coming towards the "Oceanic"?

A. She was standing over towards the "Oceanic," crossing ships.

Q. If it had been night what lights could you have seen on the "Chester"?

A. We probably would have seen all three lights.

Q. That is, a white light and both the red and green lights?

A. Yes, sir.

Q. In other words, the "Chester" was coming head on towards the "Oceanic"?

Mr. Barnes—That does not follow.

A. No, sir; end on means two ships meeting directly opposite to each other. She was not doing that.

Mr. White—Q. You do not understand me. I do not mean that the two ships were end on.

Mr. Barnes—Then do not say so.

A. End on, in the rule of the road, means two ships coming directly opposite, so that each ship can see the three lights of the other one.

Mr. White—Q. Was the “Chester” coming so that in the position she stood her masts and funnel were practically in line from where you were?

A. I should judge so.

Q. Then she was end on, or practically so, towards the “Oceanic”?

A. I do not understand that term, “end on.” “End on,” in nautical phrase, means two ships approaching so they can see the mass of the lights in a line with each other. That is the only term I understand by end on.

Q. I understand it the same way. How much may one vessel vary from the one side to the other, how many points, and the other vessel be enabled to see three of her lights?

A. She has got to change her course very little before she shuts in one light and opens the other whichever way she opens the helm.

Q. How many points, do you know?

A. Half a point at least.

Q. No more than that?

A. Not more.

Q. I will not pursue that any further. At the second time that your attention was called to the “Chester,” had her position changed any, her direction from the “Oceanic”?

A. Apparently not.

Q. Were the vessels any nearer together?

A. Considerably nearer.

Q. But her apparent direction from the “Oceanic” was substantially what it was at the first signal?

A. I should imagine so.

Q. Were her masts and funnel then in line, or practically so, towards the "Oceanic"?

A. That I could not be sure of.

Q. What I want to know is, was there anything in the way in which the "Chester" approached that indicated that she was turning towards the "Oceanic" between the first and the second signals?

A. No, sir; I think she was coming in the same direction.

Q. Between the first and second signals did it appear to you that the distance between the "Oceanic" and the "Chester" had broadened?

A. Betwen the first and second signals?

Q. Yes.

A. Had broadened?

Q. Yes.

A. No, sir.

Q. If it had been night, could you have seen all three lights of the "Chester" at the time of the second signal?

A. I think I could

Q. That indicated then that she was still coming apparently directly towards the "Oceanic" at the time of the second signal?

A. Yes, sir.

Q. As the ships had come nearer together, what had been done by the "Chester" between the first and the second signals indicated that she had turned towards the "Oceanic" during that time, did it not?

A. I should say not. It was so very short a time. I never imagined there was going to be a collision. I turned my face away, thinking everything was all right. It was

such a short time when I turned round and saw she apparently was coming in the same direction that I felt any uneasiness about it.

Q. Were you busy during the first and second signals?

A. My business was to keep a strict lookout.

Q. The second signal was sounded without your reporting back from the bow of the "Oceanic" that the "Chester" was coming on you?

A. The second signal was blown, did you say?

Q. Yes.

A. I had reported the ship previously.

Q. You had reported it at the first signal?

A. Yes, sir.

Q. Your attention was called away to some duty of getting out the anchor, and as I understand you the second signal came from you without your reporting anything concerning the course of the "Chester"?

A. I heard the second signal. I had nothing to do with that. I simply reported the ship and left it to the master and pilot to do as their judgment told them.

Q. You made no report from the bow, then, to the bridge between the first and the second signals;

A. No, sir.

Q. State again what occurred immediately after the second signal.

A. Immediately after the second signal, when the collision was likely to take place, I felt by the vibration of the "Oceanic" that her engines had been put full speed astern.

Q. After the second signal was sounded, did you make any report from the bow of the bridge?

A. No, sir.

Q. What was it that you say about after the second signal was sounded, and seeing that the "Chester" did not go to starboard that the vessel went full speed astern—what do you say about that?

A. I say that a collision was likely to take place, and in my opinion it was the only way to try and avoid it by going full speed astern.

Q. Commence with your narrative of this matter at the time the second signal was sounded, and give it to us up to the time of the collision.

A. After the second signal was sounded?

Q. At the time of the second signal up to the collision.

A. The "City of Chester" apparently was coming along in the same direction, not having answered her starboard helm, as she had signified. I then saw that unless something took place that a collision would be likely to happen. Just at that time the engines of the "Oceanic" were put astern.

Q. Just at what time?

A. A short time after the second blast was given; a sufficient time to allow them to act upon that.

Q. How long a time was that?

A. I could not state the time, but sufficient for ships to answer.

Q. Was there long enough elapsed from the time of the sounding of the second signal up to the time of the engines going full speed astern to notice whether or not the "Chester" was obeying that second signal?

A. There was ample time to notice whether she was obeying it. I understood you asked me, was there time for me to see that she had answered.

The Court—Q. Time for you to observe that she did not obey her helm?

A. Yes, sir.

Mr. White—Q. I do not know as you understand the question. I want to know whether, between the time that the second signal was sounded and answered and the time that the "Oceanic's" engines went full speed astern, was there time to see whether the "Chester" obeyed that signal and went to starboard?

A. Yes, sir.

Q. Then, when it was seen that she did not obey the signal and go to starboard, the engines of the "Oceanic" went full speed astern?

A. Yes, sir.

Q. At the time of the collision you were stationed exactly on the bow of the "Oceanic," were you?

A. No, sir; just before the collision took place I moved aft about this far (pointing).

Q. About to the foremast?

A. Yes, sir.

Q. And on the starboard side?

A. Yes, sir; directly the ships collided, I ran back from here (pointing).

Q. Why did you move back seventy-five or a hundred feet from the bow of the "Oceanic" at that time?

A. Because I saw the "Chester" was evidently trying to get across the bows, and probably would make a miss of it, and it was a very risky position to be in.

Q. That is, it was risky to your safety or to anyone's safety to be on the bow of the "Oceanic"?

A. Yes, sir.

Q. You and the men with you ran back to avoid that danger?

A. Yes, sir; to about here (pointing).

Q. You remained about seventy-five to a hundred feet from the bow of the "Oceanic" until the collision actually occurred?

A. Until the ships just met.

Q. Then what did you do?

A. We went back and took the people in and threw ropes over.

Q. You stood on the bow of the "Oceanic" and helped the people up from the "Chester"?

A. Yes, sir.

Q. How long did you remain there?

A. I remained there for several minutes. The pilot came along at that instant to find out what was best to be done. I remained there for several minutes and went to see then that the boats were away.

Q. During the time you were there, there was a struggle going on among the people of the "Chester" to see who could get up?

A. Very great.

Q. A panic among the people of the "Chester"?

A. Yes, sir.

Q. How far back from the bow of the "Chester" did the "Oceanic" strike her?

A. I should judge thirty feet.

Q. How far did the stem of the "Oceanic" cut into her?

A. Not very far. The concussion was very slight indeed.

Q. Where are you employed now ?

A. I am employed on the Occidental & Oriental steamship "Belgie."

(An adjournment was here taken until 2 o'clock P. M.)

AFTERNOON SESSION.

T. P. H. WHITELAW. Called for the defendants.
Sworn.

Mr. Barnes—Q. Captain Whitelaw, what is your business ?

A. My business is principally wrecking.

Q. How long have you been engaged in the occupation ?

A. 26 years.

Q. How long in this harbor and on this coast ?

A. 26 years.

Q. Have you had any experience as a mariner ?

A. Yes, sir.

Q. What has it been in a general way ?

A. I have been pretty nearly everything from captain to cook.

Q. How long have you been going to sea or acquainted with maritime affairs ?

A. 34 years.

Q. Do you remember Wednesday, the 22d of August, 1888 on which day a collision occurred in the bay between the Occidental and Oriental Steamship Company's

steamship "Oceanic" and the steamship "City of Chester"?

A. I do.

Q. Did you, on that day, take any steps to ascertain the situation in which the "City of Chester" was lying at the bottom of the bay?

A. I did.

Q. State the circumstances under which you did that on the day of the disaster first.

A. On the day of the disaster I was working at South Vallejo with my wrecking steamer, and a telephone came to me that the "Oceanic" and the "City of Chester" had been in collision off the heads. I immediately telephoned down to find out if my steamer was required. If so, I would stop operations where I was and proceed to the scene of the disaster at once. I got a message back stating that they did not think I could do anything because the "Chester" had gone out of sight. However, I stopped operations, and came down that afternoon and located the wreck between 5 and 6 o'clock the same day of the accident.

Q. How much water was she lying in?

A. Her bow lay in 49 fathoms and her stern in 51.

Q. Which way was she headed?

A. Her head points nearly towards the barracks on Angel Island.

Q. You found her on that day?

A. Yes, sir.

Q. When next did you go to her?

A. It was some two years afterwards.

Q. Who did you go with?

A. I took a little tugboat called the "Ida W." and a young man whom I saw in Court the other day.

Q. Stand up, Mr. Bridgett.

A. He went with me.

Q. He is not very young.

A. Pretty young. Younger then, however. I took the bearings, as my memory serves me, from the date that I had been down there locating her before. When I run down on my bearings I struck the wreck at the first sounding.

Q. Look at the bearings, as marked on this chart of the bay here shown, and state whether those are the bearings you took and where you found the ship?

A. This bearing I know is correct; Point Diablo and Point Bonita directly in line. The outer edge of the line drawn from the outer edge of Point Diablo and the light at Point Bonita.

Q. That is, that line protracted strikes the rock?

A. Yes, sir.

Q. How about the other bearings?

A. I could not tell exactly from this. I had a line from a flagpost that was on the fort on to a rock down on the south shore.

Q. And the protraction of that line—

A. Gave me the range of the rock crossing this line of Point Diablo and Point Bonita.

Q. Well, will you indicate on the map where you found that wreck to be under water the first time you went there?

A. According to this line this is absolutely correct. On the map I cannot say exactly, because there is nothing

to show this fore shore here. I am under the impression that where these lines intersect is very nearly correct.

Q. The second time you went there with Mr. Bridgett did you take the same bearings?

A. Yes, sir.

Q. Did you find the ship?

A. I struck her at the first sounding.

Q. Where was she, in the same position she was when you examined her two years before.

A. Yes, sir.

CROSS-EXAMINATION.

Mr. White—Q. What depth of water was she in?

A. Her bow is in 45 fathoms; her stern in 51.

Mr. Barnes—Allow me to ask one more question.

Q. At that depth is it possible for divers to go down and work upon a wreck?

A. No, sir; it is impossible for any diver to work more than 26 fathoms.

Q. So that you found her by soundings?

A. Yes, sir. The way I discovered her first was on account of the oil coming to the surface of the water.

Mr. White—Q. Are you familiar with this chart, the Government chart of this harbor, of which this is an enlargement?

A. I think so; I think I know something about the chart.

Q. You understand that these large-size figures here indicate the number of fathoms, depth, at the different points they are placed?

A. I don't consider that chart is correct at all, as far

as soundings. I have found a difference in crossing there of 50 feet; a difference of 12 fathoms.

The Court—Q. Between the depth and what is displayed on the chart?

A. Yes, sir. There are deep holes that seem to be gouged out; that you go along and you strike a sounding, and the first thing you know you strike down from three to five fathoms, just the same as going off a precipice.

Mr. White—Q. Then the fact that the nearest marks of depth here to the point of collision, as marked by you, indicates no greater depth than 45 fathoms, and the next nearest only 38 and 34, is of no importance in your idea?

A. No, sir. Here is 53 right there, while only 27 here, and 15 here. You might sound ten times in the width of this room and no two times you will get the same depth.

Q. How far out from the shore was this rock which you used as the back point?

A. Not very far; pretty close in.

Q. You cannot tell whether this line as drawn, from that rock and through Fort Point, goes up to the point as marked on this chart?

A. This does not show here the mark that I have reference to. When you are out on the position there on the vessel, you can see whether you get the two ranges in position. I generally locate the rock or locate an anchor. I get two fixed objects and watch until I cross that line. If I strike it once I can always strike it the second time. There is nothing here to show any of the rocks along this shore.

Mr. Barnes—Q. You are perfectly certain that the

line starting at Point Bonita light, crossing Point Diablo, protracted from there strikes the wreck?

A. Yes, sir.

Q. No doubt about that?

A. I am positive of that line, because I ran down after it had been drawn two years. I edged over here until I got that in line, and steamed down slowly until I opened a range here. The very moment I saw the bow of the boat cross the range I ordered the tug to stop and the moment she settled back, as it was flood tide, I dropped the lead and hit the wreck at once.

Q. Mr. White—You said something about Angel Island; where is that?

A. Over here.

Q. What line did you make use of to Angel Island?

A. I had no line between this and Angel Island. It was just an open view.

Q. What use did you make of Angel Island in locating the wreck?

A. I merely noted it. I did not use it as a location for the wreck.

Q. The "Chester" headed a little back towards Angel Island?

A. Yes, sir.

The Court—Altogether, he said?

Mr. White—Altogether. What direction would that be, giving the points of the compass for it—that is, about?

A. I think about east northeast. I should have to look at the chart to be positive about that. It serves me in my mind it would be about east northeast.

Q. So far as you know, the wreck may have been

further in to the harbor or further out towards the heads than this point indicated by these three converging lines on the chart?

A. I think that is pretty nearly correct where it is now. In drawing a direct line between Lime Point and Fort Point, she was in, I should judge, 250 yards inside of that line—from that to 200.

Q. In making that estimate, do you take some specific point here on the north side?

A. I take the fog signal as being Lime Point, with the flagstaff on the fort.

Q. From 250 to 300 yards inside of that?

A. Yes, sir.

The Court—Q. From the bearing of the land and the sea, was the wreck nearer to Lime Point than it was to Fort Point?

A. Yes, sir; it is about three-fifths of the distance towards Lime Point and two-fifths from Lime Point this way. That is on the San Francisco shore. It was three-fifths from the San Francisco shore towards Lime Point, and I estimate two-fifths of the distance from Lime Point this way (pointing).

Q. That is on an angle?

A. On an angle, not a direct line. She is inside of the direct line between the two.

Q. She is nearer Lime Point than she is Fort Point?

A. Yes, sir.

Q. By this proportion?

A. Yes, sir.

Mr. White—Q. You mean these proportions of 3 to 2?—

A. Are about correct.

Q. Are where these red lines would be, the position of them, not the length of them?

A. Not the length of them, but the position of the red lines.

Q. The red lines from the point of wreck to the flag-staff at Fort Point would be to the red line from the scene of wreck to the north shore as 3 is to 2?

A. About that; yes, sir.

GEORGE E. BRIDGETT. Called for the defendant.
Sworn.

Mr. Shay—Q. What is your occupation?

A. At the present time?

Q. Yes.

A. Shipping clerk at the Risdon Iron Works.

Q. On the 22nd of August, 1838, in what business were you engaged?

A. Second officer of the steamship "Oceanic."

Q. At that time how long had you been serving in such capacity upon the "Oceanic"?

A. About two years, I think.

Q. At that time for how long a time had you been following the sea?

A. Between ten and twelve years.

Q. In what capacity?

A. In different capacities, working my way up.

Q. You were a licensed officer at that time?

A. Yes, sir.

Q. From what body did you hold your license?

A. I held a mate certificate out of England.

Q. Beginning with the morning of August 22nd, 1888, say at 4 o'clock in the morning, and go on and state what to your knowledge occurred upon board of the "Oceanic" up to the time of the collision with the "Chester."

A. At 4 o'clock in the morning I came on deck and went forward on the whaleback.

Q. That is this point here (pointing) ?

A. Yes, sir; to keep a lookout, the weather being hazy and a little thick at times. The vessel was going, I believe, at that time slow or half speed, the Captain and chief officer being on the bridge. We had also two sailors on the lookout on the whaleback, one on each side of the whaleback. We proceeded up towards the whistling buoy, stopping several times for soundings. We got up in the neighborhood of the whistling buoy and heard the whistling buoy; heard the signal from the pilot boat, and afterwards picked up the pilot. The pilot being on board, I went on the bridge, the chief officer leaving the bridge and going forward on the whaleback.

Q. At about what time in the morning was that ?

A. Just after the pilot came on board; somewhere about eight o'clock. We proceeded towards the whistling buoy; not hearing it as soon as was expected, the Captain proposed to stop the ship, which was done, there being no noise. We heard the whistling buoy, and the pilot then shaped our course towards the North Head, and, steering on that course some fifteen or twenty minutes—I would not be sure about the number of minutes—we picked up the whistle on Bonita Point. The Captain and pilot gave orders to look out for the nine-fathom buoy,

and requested the pilot to keep to the north side of mid-channel. We did not see the nine-fathom buoy at all, but we picked up a sailing ship, which was at anchor, with the tug "Relief" ahead of her. That sailing ship, when we passed her, was heaving her anchor to proceed into port, I believe. Our pilot hailed the Captain of the tug and asked him what the weather was like inside, or at the heads. The answer, I believe, was "yes"—we understanding him to mean that it was clearing inside. We proceeded slow, and several times stopped, and sometimes we went half speed when it was clear enough and prudent to do so. We got up past Point Bonita, and afterwards passed Point Diablo. We could see Point Diablo down the water's edge quite plain, and passing Point Bonita we could just see the loom of the high land. We were then proceeding dead slow, and the whistle had been going all the time ever since four o'clock in the morning.

Q. Giving what signal?

A. Giving one signal.

Q. That is known as what?

A. As the ordinary fog signal. We passed Point Diablo. Just after doing so we heard the whistle of a steamer which appeared to be coming out. Everybody's eyes were attracted in that direction. Just after hearing her whistle two or three times the ship appeared. The pilot gave the order to blow two blasts and the helm to be put hard a-starboard, he then standing right over the wheel-house where he could see that the quarter-master was putting the helm hard a-starboard; and the two whistles were blown by myself, standing here alongside the telegraph.

Q. Where was the whistle?

A. The whistle is here, blown by a line along by the bridge.

Q. You had that line in your hand all the time?

A. Yes, sir. I was standing right between the telegraph and the line. The line is made fast here (pointing). All I had to do there was to take hold of the line and pull it, or work the telegraph, whichever was required.

The captain said to the pilot, "That is all right; she has answered our whistle." Still watching her, the captain said, "She does not seem to answer her rudder;" and the pilot said, "No, blow two whistles again;" which was done. Then the captain said—

Q. (Interrupting.) Did she answer those two whistles?

A. She answered both whistles each time; the captain then said, "Full speed astern;" and he worked the telegraph himself.

Q. How long a time elapsed between the blowing of the last two whistles and the order to go full speed astern?

A. Almost immediately. The vessel came along acting as though she was under the influence of her port helm; she came right along and struck the "Oceanic" right in the bow. The captain then said, "Order the engines to be stopped immediately." He said to the pilot, "You go forward and ascertain what the damage is, and give me the orders to do whatever you want me to do." The captain then said, "That vessel is sinking." And he ordered the boats out; he ordered—he gave orders that the "Oceanic's" boats be cleared away and lowered, and I left the bridge and went with four sailors—with four or five sailors—and lowered number eight boat—that is the one

(referring to the photograph of the "Oceanic")—and the four sailors came in the boat with me, and we pulled up towards the bow of the "Oceanic," and there were two men hanging from the end of the bow of the "Oceanic," right here (showing.) I won't be sure whether they were on two different ropes or on the same rope, and I got them in the boat, and somebody said, "look out," and I looked up and saw the foreyard of the "Chester" right on this rail of the "Oceanic" (showing), and almost immediately it came down across the boat and struck the boat forward in the midships and capsized the boat right straight into the water, throwing the two ladies and the four sailors and myself into the water, and I went down; I remember going down, and I did not see anything until I afterwards came up out of the water amongst a lot of wreckage; the ship had entirely disappeared, and with the assistance of the men that were in the water I got a hold of some of this wreckage, and was afterwards picked up by the fourth officer and brought to the "Oceanic"—the fourth officer's boat being full of passengers from the "Chester"—and when I got on the "Oceanic" and went on the bridge, the captain was still there, and I think the pilot was still forward. It was some time after the collision.

Q. At what distance from the "Chester" was the "Oceanic" when you first saw her?

A. A half mile.

Q. What was the character of the weather—fog, etc.?

A. Well, it had been foggy—clearing at times, and at that time you could see a half mile away.

Q. When you first saw the "Chester," in which direc-

tion was she heading as regards the "Oceanic?" Just show by those models.

A. (Placing the models in position.) That is about the position as near as I can give it, I think.

The Court—They were about half a mile apart?

A. Yes, sir.

Q. If when the first interchange of signals took place the City of Chester had been turned to the left and had minded her helm, would there have been any danger of a collision?

A. No, sir; impossible.

Q. If when the second interchange of signals took place the City of Chester had acted as indicated by the signals, would there have been a collision?

A. No, sir, I do not think there would.

Q. Do you remember having gone with Captain Whitelaw to locate this wreck?

A. Yes, sir.

Q. At what time did you do that?

A. November 30th, 1890.

Q. Did you assist in making soundings, and did you make soundings yourself?

A. Yes, sir.

Q. Can you point out from the chart where the wreckage was at that time?

A. Yes, sir.

(Refers to the chart.)

Q. Explain to the Court just what you did on that occasion, and how you located the wreck, and where the wreck was at that time.

A. Coming down the bay on the tug "Ida W.," Cap-

tain White-law and myself, he said if we kept Point Diablo and Point Bonita in a line we were bound to come over to the wreck, and we got so far down, and he said: "We are right over the wreck." Now the tug stopped and backed a little, and soundings were taken, and we were right over the wreck, and dropped a grapple down, and the grapple stuck to the wreck, and with some difficulty we got it clear and found that it had been in the woodwork of the Chester, and we dropped the grapple again, and we took these bearings.

Q. The bearings are in red lines upon the map?

A. Yes; Point Bonita and Point Diablo in a line extended right up to Fort Point bears south quarter west, and following up here to the needles bears northeast by west, quarter west, and that is the position of the wreck.

Q. That is where she was November, 1890?

A. Yes; with 51 fathoms at one end and 49 fathoms at the other end.

By the Court--Q. How far away from Point Bonita were you when you first discovered the loom of it--the form?

A. We discovered the loom of Point Bonita when it was right abeam, between a quarter and a half a mile I should judge.

Q. How far was Point Diablo to the north when you passed that point?

A. A little over a quarter of a mile, sir.

CROSS-EXAMINATION.

Mr. White--Q. Did you see the shore on the north side?

A. Yes, sir.

Q. Did you see anything of it?

A. No, sir.

Q. Did you see Fort Point?

A. No, sir.

Q. Nor the loom of it?

A. No, sir.

Q. When did you first see Fort Point, if at all?

A. I did not see Fort Point at all; not until after the collision; I had not seen it before.

Q. Did you see Lime Point?

A. Yes, sir.

Q. How far off from you was Lime Point at the time of the collision?

A. Less than a quarter of a mile.

Q. How many points off your starboard bow was the Chester when you first saw her?

A. Two and a half to three points.

Q. And about half a mile distance?

A. Yes, sir.

Q. Did you watch her from that time up to the time of the collision?

A. Yes, sir.

Q. At the time the second signal was sounded from the Oceanic how many points off your starboard bow did the Chester appear to be?

A. About three points.

Q. She appeared, then, to have gone to starboard during that time; is that right?

A. No, sir.

Q. Then you thought it appeared to you that she was

further—a greater number of points off from you at the time of the second signal than she was at the first?

A. I don't know that she was.

Q. I understood you to say that at the time of the first signal she appeared to be about two and a half or three points from you?

A. Yes, sir.

Q. And at the time of the second signal, about three points?

A. Yes; well, she might have been two and a half points or three points; about in the same position.

Q. What direction did she appear to be heading at the time the first signal was sounded?

A. Right for the bridge of the *Oceanic*; may have been a little bit abaft of the bridge.

Q. What direction did she appear to be heading at the time of the second signal?

A. The same direction.

Q. Appeared to be heading towards the bridge of the *Oceanic*?

A. Yes, sir.

Q. How much nearer was she; what distance were the ships apart at the time the second signal was sounded?

A. About a quarter of a mile; may be a little less.

Q. That is, between the first and second signal the ships had covered about half the distance that was between them; is that right?

A. Yes, sir.

Q. After the second signal was sounded, what was the action of the *Chester*?

A. She appeared to be acting under the influence of her port helm.

Q. What way did she turn; will you indicate by the model?

A. She turned this way (showing).

Q. Did she appear to be going in a circle around toward her right in this way, so as to come across your bow?

A. Not exactly a circle; she appeared to be going in this fashion (illustrating).

Q. Made some progress towards the Oceanic, and at the same time turned her bow more to her right all the time?

A. Making pretty rapid progress towards the Oceanic and turning her bow.

WILLIAM ALLEN. Called for the defendant. Sworn.
Testified as follows:

Mr. Shay—Q. Mr. Allen, what is your occupation?

A. Marine engineer.

Q. On the 22nd day of August, 1888, was it the same?

A. Yes, sir.

Q. You were then chief engineer of the steamship Oceanic?

A. Yes, sir.

Q. How long had you been such?

A. Since January, 1883.

Q. For how long a time have you been an engineer?

A. Twenty-seven years; twenty years chief engineer.

Q. And licensed from where?

A. Great Britain; Liverpool.

Q. Upon the 22nd day of August, 1885, what was the condition of the machinery upon the *Oceanic*?

A. Good condition.

Q. First-class?

A. Yes, sir.

Mr. White—I will admit that it is good.

Q. And you had a regular staff of engineers and assistants?

A. Yes; six engineers and a boilermaker.

Q. Do you know what was about the speed of the *Oceanic* upon the morning of that collision at various times, say from 4 o'clock on in the morning?

A. Yes sir; at 4 o'clock we stopped and took soundings, and then proceeded at various speeds until we picked up the pilot, and for eleven minutes prior to the collision we were going dead slow, making about twenty revolutions a minute.

Q. By "dead slow" you mean what?

Mr. White—Q. Is there an engineer's log kept by you that shows all these things?

A. Yes, sir.

Q. Have you that here?

A. I have not.

Mr. Shay—I have it; it is here.

Mr. White—I submit that the record made is the best evidence.

Mr. Barnes—The log is not better evidence than the testimony of the officer.

The Court—Objection overruled.

Mr. White—We except.

Q. What do you mean by dead slow?

A. A speed as slow as I can drive the engine with safety without having them stopped.

Q. Enough to keep steerage way on the ship?

A. Yes, sir.

Q. Do you know what was the character of the weather upon this morning?

A. Foggy weather.

Q. Very foggy?

A. Well, I don't know much about the fog, except that we would stop occasionally and the speed was varied occasionally, but I know for a fact that at 9:14 we went dead slow, and the next thing was we went full speed astern.

Q. When the order came to put the engine full speed astern, was that order obeyed at once?

A. At once.

Q. Did the engineers respond at once?

A. At once. The first engineer had the wheel, handling the engine.

Q. Do you know whether at the time of the collision the forward speed of the vessel had been stopped?

A. I know that we had gone astern for two minutes—full speed astern—and I think that at the rate of speed she was going that it ought to have been stopped—must have been stopped.

Q. Did you see the collision yourself?

A. No, sir.

Q. You were down below at that time?

A. I was down in the engine room.

Q. Do you recollect whether or not there was any shock at the time the ships came together?

A. Not much shock ; I was just getting down off the platform at the time.

A. Did you hear any crash ?

A. No, sir.

CROSS-EXAMINATION.

Mr. White—Q. Where were you all that morning from 4 o'clock up to the time of the collision ?

A. In the engine room.

Q. All the time ?

A. Yes ; my room is at the top of the stairs, so that I was in communication with the engine room all the time, as required in my position, and in foggy weather I am always on duty.

Q. How many minutes had you been going dead slow just prior to the order to go full speed astern ?

A. Eleven minutes, sir.

Q. Just eleven minutes ?

A. Yes, about eleven minutes ; eleven minutes by my records.

Q. How many minutes did you go full speed astern before the collision ?

A. By my records two minutes.

Q. Two minutes ?

A. Yes, sir.

Q. Who made the record ?

A. It is made by the engineer telegraphing below, and entered by me in my log book.

Mr. Barnes - Mr. Allen, won't you explain to the Court just how these things are done down in the engine-room; how you get the signals, and how they are answered back;

how they are obeyed, and how they are answered back that they are obeyed?

Witness (referring to the apparatus in Court)—This is quite different from what they have on the Oceanic, as far as the bells are concerned; but the officer on the bridge rings that telegraph, and it produces the signal on our telegraph below, in the engine-room, and rings the bell at the same time.

Mr. Barnes—Just explain how you do it.

The Court—Let the second officer give the signal from the bridge.

Mr. Barnes (to the second officer)—You go on the bridge now and regulate that speed. Where is she at now?

A. Stopped.

Mr. Barnes—Now send her half speed ahead

(Here the witness illustrates.)

(The witness then explains by actual experiments on the telegraphic apparatus how to regulate the speed of the vessel and how to stop the vessel, and in explanation of it, says:

The one on the bridge telegraphs to us below, and then our pointer travels to where he wants us to go and rings a bell; then we take a hold of the hands and signal them upstairs that we understand them, and then the engineer is always there to at once execute the order.)

By Mr. White—Q. As to the time that was consumed, are you testifying from your own knowledge or from what your log book shows you?

A. From my own knowledge, and also having kept a log for my owners; I remember distinctly.

Q. Did you take the time yourself—the eleven minutes dead slow and the two minutes full speed astern?

A. No, sir; the young man on the telegraph; I think it was either the fifth or sixth engineer; he is here in Court.

Q. How do you know, then, what length of time it was?

A. I know because the book shows for itself.

Q. The book shows?

A. Yes; the book shows the items and all that sort of thing.

Q. As I understand you to say, the telegraph on the Oceanic is not exactly like this one?

A. Not exactly like it; but it is the same, except there is no electricity about it.

Q. On the Oceanic there are two levers on each one of these dials?

A. Yes, sir.

Q. And you turn one first to signify up from the engine-room that you understand the signal, and then you turn another one to make your engine obey?

A. No; we signal that we understand it, and execute it at the same time.

Q. By one motion?

A. Yes; so the Captain knows at once that we carry it out.

Q. Now, when you turn that lever that takes the message up onto the bridge, and you say that the order is executed at the same time?

A. Yes, sir.

Q. All at the same time?

A. Yes, sir.

Q. Then there are two levers connected with each instrument?

A. There is only one lever in the engine-room for handling the telegraph to reply the Captain.

Q. You don't have one lever to signal up to the Captain or pilot and another one to make the engine move?

A. Oh, no.

By Mr. Barnes—Q. The same motion which produces—which operates the engines, notifies the Captain, as I understand it?

A. Oh, no; the telegraph is for telegraphing to the Captain that we understand his orders, and the first assistant engineer is handling the levers; he executes the order.

By the Court—Q. There are separate levers?

A. Yes, sir. The junior engineer is at the telegraph, and another engineer is at the lever at the engine and handles it.

By Mr. White—Q. One engineer answers the telegraph and the other one manipulates the lever of the engine?

A. Yes, that's it exactly; that is the position in the engine-room.

Q. How is it with this one?

A. It just as quick, sir; just as quick on the Oceanic.

Q. This machine here actually starts the engine, doesn't it?

A. Oh, no; it doesn't start the engine.

THOMAS MIRK. Called for the defendant. Sworn. Testified:

By Mr. Shay—Q. Mr. Mirk, what is your position at present?

A. Chief engineer of the Metropolitan Electric Railroad.

Q. That is a street railroad in this city ?

A. Yes, sir.

Q. How long have you been with the company ?

A. Since it started ; a little over a year ago.

Q. Upon the 22d of August, 1883, you were an engineer or assistant engineer upon the steamship *Oceanic*, were you not ?

A. Yes, sir.

Q. What were your duties upon that morning, and where were you stationed ?

A. Standing by the telegraph and taking notes.

Q. Where, by the telegraph ?

A. In the engine room.

Q. Do you know at what speed the *Oceanic* was moving at various times upon that morning ?

Mr. White—That is under my same objection—that it is not the best evidence, and that it appears that there was a log kept.

The Court—Yes, sir.

A. She was going at various speeds, changing every few minutes ; of course it was marked all down on the log ; every change that is made is marked down ; sometimes we would make two changes or more in a minute

Q. Say for half an hour before the collision with the "*Chester*," what was the speed of the "*Oceanic* ?"

A. Slow and dead slow eleven minutes previous to the collision.

Q. And during that eleven minutes she did keep at dead slow ?

A. Dead slow.

Q. Do you know at what time before the collision, if at all, an order came to the engine room to put the engines full speed astern?

A. I can't tell the exact time.

Q. How long before the collision did you get such an order?

A. Well, the only way I could tell about the collision was that we felt a slight shock, and the engines had been going nearly two minutes full speed astern.

Q. What was the character of the shock?

A. Well, we just felt as though we had struck something.

Q. Was it severe at all?

A. No, it was quite slight.

Q. Did you hear any crash of timbers or anything of that kind?

A. No, we could not hear anything below.

Q. Did you hear the whistle sounded by the "Oceanic" that morning?

A. Well, they sounded the whistle all the morning—the usual fog signal.

Q. Did you hear the other whistles, if any, that were sounded?

A. No, I can't say that I heard any other whistle outside the fog whistle.

CROSS EXAMINATION.

By Mr. White—Q. You say you had been going nearly two minutes, or not quite two minutes, full speed when the shock occurred?

A. Yes, sir.

Q. Were you the one that made the record?

A. Yes, sir.

Q. When did you make it?

A. Immediately when the telegraph is given I note it down in the book.

Q. Just note it down in the book?

A. Right there; that is all I do.

Q. Did any order come to you at the time the collision occurred—at the time you felt the shock?

A. It was just a little after when they rang, "Stop."

Q. To stop?

A. Yes, sir.

Q. After that how long was it before you got an order?

A. Probably another minute, I think; something like that. I think we went ahead a little then.

Q. About a minute?

A. Yes, sir.

Q. What order did you get in a minute after you got the order to stop?

A. Slow ahead.

Q. Did you enter that in the log?

A. All in the log.

Q. What other order did you get; what was the next one after that?

A. To stop.

Q. To what?

A. To stop.

Q. How long was that after you got the order to go ahead?

A. Oh, probably half a minute; we only made a few revolutions.

Q. Did you enter that in the log?

A. Yes, sir.

Q. What order came next after you got that order to stop?

A. Oh, some time after, I think we went ahead; my memory don't follow it up, although it is all in the book.

Q. Do you know how long it was after?

A. Well, it was quite a little while after.

Q. What was the next order that you remember?

A. I could not say; I don't remember.

Q. Now, as I understand you, for some minutes before the collision you had an order to go dead slow, and you obeyed it, and entered that in your book?

A. Yes, sir.

Q. Then, in not quite two minutes before the collision, you received the order, "Full speed astern," and you obeyed that?

A. Yes, sir.

Q. Then a little time after the collision, or just at the collision, you got the order to stop, and you obeyed that?

A. Yes, sir.

Q. Then, in about a minute, you got an order to go ahead, and you obeyed that?

A. Probably in about a minute we went ahead a little.

Q. Then, at the end of that minute, you got an order to stop.

A. Yes, sir.

Q. And obeyed that?

A. Yes, sir.

Q. And then, you say, it was perhaps some minutes after that before you got any further order?

A. Oh, yes; it was quite a little time after.

Q. You don't know what the order was?

A. I don't remember whether it was astern or ahead.

Q. But you entered these things yourself in the log in the engine-room at the time?

A. Yes, sir.

ARCHIBALD B. BROLLY. Called for the defendant.
Sworn. Testified:

By Mr. Shay—Q. Mr. Brolly, upon the 22d of August, 1888, you were the second engineer on board the steamship *Oceanic*, were you?

A. I was.

Q. Second assistant engineer?

A. Second engineer, or first assistant.

Q. Do you recollect about what time the pilot came on board the *Oceanic* on that morning?

A. No recollection.

Q. Do you know whether or not it was about 8 o'clock?

A. I have no recollection of that.

Q. Do you recollect at what speed the "*Oceanic*" was moving after the pilot came on board of her?

A. At various speeds—

Mr. White—(interrupting.) Let the reporter note my objection to that, the same as before stated.

A. (Continuing.) Not exceeding half speed.

Q. Do you remember the fact that a collision occurred that morning?

A. I do.

Q. Do you remember about what time in the morning it occurred?

A. By our clock in the engine-room it was somewhere in the neighborhood of 9; shortly after 9 o'clock.

Q. Pretty close to 10, wasn't it?

A. It was after 9; I don't recollect the exact time; it is five years since I gave my testimony.

Q. Did you feel any shock at the time?

A. A very slight one; a very slight shock.

Q. Do you know what was the speed of the "Oceanic" shortly before the collision, say for twenty minutes or so before?

A. Not of the ship.

Q. Do you know how the engines were running at that time?

A. Yes, sir.

Q. How?

A. Dead slow.

Q. Say for two minutes before the collision, do you know how the engines were running?

A. Full speed astern.

Q. Were you in charge of the engines at that time?

A. Yes, I was in charge of the engines.

Q. How did you receive your order to put the engine full speed astern?

A. By telegraph, and also verbally from the engineer who was stationed at the telegraph in the engine-room.

Q. And upon receiving the order from the bridge to put the engines full speed astern, did you at once comply with it?

A. At once.

Q. Did the engines at once respond?

A. Immediately.

CROSS-EXAMINATION.

By Mr. White—Q. How many minutes had you been going dead slow before you got the order “full speed astern”?

A. Eleven minutes.

Q. How many minutes was it from the time you received the order full speed astern before you felt this shock?

A. It was about two minutes.

Q. And how long was it from the time you received the order full speed astern until you received the order to stop?

A. It was about two minutes; it was almost immediately after.

Q. What next, after you received the order to stop, what next order did you receive?

A. As well as I can remember, we went dead slow ahead, just for a few turns.

Q. Did you receive that order?

A. I received that order.

Q. You did nothing at all except you received the order from above?

A. I worked the engines; controlled the engines.

Q. You did nothing with the engines unless you received the order to do so?

A. No.

Q. And how long was it, as near as you can remem-

ber, from the time you received the order to go ahead until you received another order?

A. I say we only made a few turns, meaning probably a few seconds.

Q. Probably what?

A. Probably a few seconds.

Q. Then what order did you receive?

A. To stop.

Q. And what order did you receive after that, and when did you receive it?

A. I didn't for some time afterwards; considerable time.

Q. About how long afterwards, to the best of your recollection?

A. I can't recall that time; it was considerable time afterwards.

Q. Do you recollect what the next order was?

A. No, I have no recollection of the next order.

JAMES SWAN. Called for the defendant. Sworn. Testified:

By Mr. Shay—Q. Mr. Swan, upon the 22nd of August, 1888, you were the second officer on the Oceanic?

A. I was the third officer on the Oceanic.

Q. What was your station upon the ship—where was it?

A. On the after end of the ship, to look after the steering gear particularly.

Q. Just point it out on that photograph.

A. I was aft, about there, to look after the steering gear.

Mr. White—I admit everything that General Barnes

said in his opening statement relative to the position of this officer, and what he was there for, and what he did.

Q. Well, stationed at your post, did you hear anything indicating—

A (interrupting). When we reached Point Diablo, just inside of it, I heard the fog whistle.

Q. From some other steamer?

A. From another steamer on our starboard bow.

Q. Did you see that steamer?

A. Not then; there were two blasts of whistles coming from the Oceanic, and she replied. I didn't see her then, and immediately afterwards I saw her, and the Oceanic gave two blasts more, and she repeated it.

Q. How far off was this steamship when you first saw her?

A. I think about a half a mile.

Q. In about what direction was she heading?

A. She was heading—I could not exactly say—but she was heading towards us; towards our bridge.

Q. Do you know about how far off; how many points she was from the bows of the "Oceanic?"

A. Well, I should say from two and a half to three points; not less than two and half.

Q. Did you hear her from that time up to the time of the collision constantly?

A. Yes, sir.

Q. You saw her all the time?

A. Yes, sir.

Q. After she had responded to the second blasts of the "Oceanic," if she had minded her helm, and if she

had done as her whistle indicated, do you think there would have been a collision ?

A. No, sir ; there would have been none.

Q. After the second interchange of signals, what did the "Chester" seem to do—what did she do ?

A. She seemed to turn on her port helm and slide right on to us.

Q. Did you feel any shock at the time of the collision ?

A. No.

Q. At the time of the collision what did you do, and immediately afterwards ?

A. On reaching the forward end, after trying to get some of them up over the bows, the chief officer gave me orders to put the boats out, and I put Number three boat out and started to leave the "Oceanic," and when we left the ship, Captain Metcalfe said to me, "Be careful when you get inside the ship so you don't get taken down with it," and I went over to the "City of Chester," and I saved all the lives that I could.

Q. How many people did you save ?

A. Thirty-two ; I had thirty-six, but four left my boat and went into one of the "City of Chester's" boats, and I delivered thirty-two to the ship.

Q. How many boats did the "Chester" lower ?

A. I only saw one.

Q. How long before she sank was that boat lowered ?

A. Well, I was alongside of the "City of Chester" before she was put into the water, so it could not have been very long. For I was forward on the "Oceanic"—on her bow—and I rushed aft to get the boats down, and went over to the ship ; I can't say the time that I was there

when the ship went down; some say it is four minutes, some say it is six minutes after the collision; I could not tell because I was too much occupied to tell the time; but their boat was about one minute or two minutes in the water before she sank.

Q. At the time that you saw the "Chester" coming in the direction of the "Oceanic," at what speed was the "Chester" moving?

A. Well, I should think she was going at the rate of seven miles an hour.

Q. What was at that time the speed of the "Oceanic?"

A. Well, she was dead stopped; and if she had any speed at all, she was going astern.

Q. At the time of the collision?

A. At the time of the collision she wasn't going through the water, ahead, at all,

Q. What was her speed shortly before the collision?

A. Oh, we were coming in dead slow, sir, for about fifteen or twenty minutes.

Q. At the time you saw the Chester, where were you?

A. I was aft.

Q. Whereabouts aft?

A. I was in the after end of the ship, here, on the starboard side (showing), and, as I saw that the collision was unavoidable, I walked forward.

Q. At the time of the sinking of the Chester, where were you?

A. I was within ten or twelve feet of the Chester.

Q. In the boat and in the water?

A. In the boat and in the water.

By Mr. White—Q. Which side?

A. On her port side.

Q. At the time the Chester went down, she went down head first?

A. Yes, sir.

By Mr. Shay—Q. She went down head first?

A. Yes, sir.

Q. At the time that she went down, did you notice the position of her rudder?

A. Her rudder was a-port when she sunk.

CROSS-EXAMINATION.

By Mr. White—Q. How far away from the port side of the City of Chester were you when she went down?

A. I don't think it was over fifteen feet.

Q. How far back from her bow were you?

A. Oh, I know I was about here (showing), and the ship was there (showing).

Q. What do you mean by being there (showing)?

A. Well, about thirty feet from her stern, or twenty feet when she commenced to sink; and then, as she commenced to sink forward, I was only about fifteen feet from her propeller; I had to shove her off with my oar.

Q. You were trying at that time to get your boat further away from the Chester?

A. I did; yes, sir.

Q. That is what you were trying to do?

A. Yes, sir.

Q. What was the position of your boat towards the Chester at the time; how was your little boat headed?

A. Head end on to her.

Q. Which end?

A. Bow on.

Q. The bow towards her?

A. Yes, sir; the bow towards the Chester.

Q. Where were you in the boat?

A. I was in the forward end; I was in the bow of her.

Q. What were you doing?

A. I was trying to save lives.

Q. And you were in the forward end of your boat?

A. Yes, sir.

Q. And that is the time that you say you took the snap shot of her and saw that the propeller, the rudder of the "Chester" was turned to port?

A. I don't say it was hard over, but it was more than a half over to port.

Q. On which side of the "Oceanic" did you lower your boat?

A. On the starboard side.

Q. Which boat was it?

A. Number three.

Q. (Indicate on that photograph which boat it was).

A. (Referring to the photograph of the "Oceanic.") This boat, on the opposite side; right opposite this.

Q. The boat which is at the left of the funnel?

A. It is on the right of the funnel; this is the left; this side is the port side of the ship.

Q. And the boat on the other side, from where it shows here on the picture?

A. Yes, that boat is a little further forward than she was.

Q. Now, as I understand you to say, when the collision

occurred you were here at the stern, looking after the hand gearing for steering ?

A. Yes, sir; just before it happened.

Q. And when the collision occurred, you ran forward to the bow of the "Oceanic," did you ?

A. Yes, sir.

Q. That distance is something like four hundred feet ?

A. Yes, four hundred feet; it does not take a man very long to go there.

Q. And then you helped to get people over the bow for a while ?

A. Yes, sir.

Q. And then you went back on the starboard side, just about midships, or right as far back as this funnel, and lowered the boat ?

A. Not quite so far as the funnel.

Q. And after lowering your boat, you rowed your boat forward until you were on the port side of the "Chester," and you rowed almost to the stern of the "Chester" before she went down ?

A. Yes, sir.

Q. What length of time when you saw the rudder; just what length of time did you see it ?

A. Well, the ship was going down pretty quick; I could not see it over a minute; the ship was turning right over end, and I had every chance to see it, because her keel was thrown right out of the water; I could see her keel for twenty feet or more from her stern post.

Q. Did you row around towards the front, towards the bow of the "Chester" at all ?

A. No, sir.

Q. But you came well around towards the stern of the "Chester" with your boat from the first?

A. Yes, I could not get on this part of the ship because I was on the port side, and here she was close to the "Oceanic," and I could not get in between the "Oceanic's" bow and her bow with safety.

Q. Do you remember that you noticed the "Chester's" rudder when the people had all or nearly all left her?

A. Yes, I guess so, and I saw a man sticking up on the after end, and I thought I would get him when she went down, and the Captain was still there—I don't know what became of that man—and the Captain, just before she sank, he left the bridge and jumped overboard.

Q. You make an estimate that the Chester had a progress of six or seven miles an hour?

A. Yes, sir.

Q. Are you reckoning that as being her progress through the water, or as she would be viewed from a point on the land?

A. The progress through the water; I have nothing to do with the land.

Q. How did you form that idea?

A. Well, the time I have been to sea. We can almost tell how much a ship is going within a quarter of a mile or half a mile?

Q. How?

A. By looking at it and seeing the speed that it is going at.

Q. Did you compare the speed of the Oceanic at that time with any point on the shore, to see how fast she was going?

A. She had no speed at all.

Q. I am asking you whether you compared it with any point on the shore to see whether she had any speed or not?

A. I know she was not moving on the water.

Q. Did you compare the speed of the Oceanic with with any point on the shore?

A. There was no occasion to do it.

Q. Did you compare the speed of the Oceanic with any point on the shore, yes or no?

A. No, I did not.

Q. Now, what was it that you judged by in determining what speed the Chester had?

A. By the foam or the break that she was sending from her bow.

Q. Do all ships going at the same rate of speed send the same break from the bow?

A. No.

Q. At the same rate of speed it appears much more on one ship than on another ship?

A. Yes, sir.

Q. Were you familiar with the Chester at that time?

A. I am almost familiar with any kind of a ship.

Q. Were you familiar with the Chester so that you knew how much foam she threw up from her bow?

A. No.

Q. Going at a certain rate of speed?

A. No.

Q. You did not know, then, you could not tell absolutely by the appearance of her bow, what number of miles she was progressing through the water?

A. Not within a half a mile.

Q. Now, I will ask you, if a vessel were coming against a very strong tide and she was simply making progress enough to hold her against that strong tide, wouldn't it appear to any other vessel, from the appearance of her bow, that she was making progress through the water?

A. She would be making the progress the strength of the tide was running at. If the tide was running four miles—

Q (interrupting). Well, she might appear to make a good deal of progress, judging from the water of—the appearance of the water on her bow, if you looked at her from another vessel, and yet from the land she might not be making any advancement at all.

A. Not if she was not going any faster than the tide was running.

Q. Doesn't the tide sometimes run fast enough against a ship to throw the water up on her bow when she is simply holding herself against the tide?

A. The ship is going through the water.

Q. Or, rather, the water is running past the ship; isn't that the idea?

A. No, the ship is going through the water; the water would take the ship with her if she was lying simply there, but if she is propelled she is going through the water.

Q. And yet, while the water might curl up a great deal from her bow, she would not make any progress on her journey, as being viewed from a point of land?

A. No, she would make no progress if she was going only as fast as the tide would run.

Q. She would make progress?

A. I say she wouldn't make any progress if the tide is running at the same speed that she is speeding, and she would remain stationary as far as the land is concerned.

Q. And yet she might appear to another vessel to be making considerable progress through the water, so far as the appearance of the break or foam on her bow was concerned?

A. Yes, sir.

Q. Isn't that so?

A. Yes, sir.

Q. Now, I will ask you another thing: Isn't it so, that people on one ship, viewing another ship, that it always appears to them that they are stationary and the other ship is coming towards them?

A. No; not to any man that is familiar with sea; not to a seaman, because he can always tell what the speed is that a ship is making.

Q. How can he see it?

A. By going through the water and estimating the speed; a seaman can always tell what speed a ship is going, within a quarter of a mile.

Q. And as to the condition of the Oceanic, you mean to say that she was going at whatever rate of speed the tide would carry her forward, with the speed, dead slow, added to that?

A. Not at the time of the collision; she was going astern then.

Q. I mean just prior to the collision.

A. Yes, dead slow; just enough to make her steer all right.

Q. And you think the progress of the Chester through the water was about six miles?

A. Yes, sir.

HENRY ALBERT McLAUGHLIN. Called for the defendants. Sworn. Testified as follows:

By Mr. Shay—Q. What is your business?

A. Master and pilot of steamers on the bay of San Francisco and tributaries as far as Benicia and return.

Q. What were you doing on the twenty-second of August, 1888?

A. On the twenty-second of August 1888, I was temporarily in command of the tug "Relief."

Q. Upon the morning of that day, where were you?

A. On the morning in question I went out to sea, "seeking," as we call it, for a tow.

Q. Did you find any?

A. Yes, sir.

Q. What was the ship?

A. The ship "Lord Wolseley," if my memory serves me right.

Q. Where was she at the time you found her?

A. About two miles from the north head; a little to the north of the middle channel.

Q. Did you fasten on to her?

A. Not when I first saw her; I did later on.

Q. What time did you fasten on to her?

A. As near as I recollect now, it must have been in the vicinity of 9 o'clock; I cannot recollect sure for a few minutes; it has been a long time since this happened; about 9 o'clock; probably a few minutes before; very near 9 o'clock.

Q. Did you see the steamship "Oceanic" that morning?

A. I did, sir.

Q. What was she doing when you saw her?

A. She was coming in.

Q. At what distance did she pass you?

A. I think she passed me about three times her length.

Q. That would be three times five hundred feet, or about fifteen hundred feet?

A. Well, somewhere near that; I don't think quite as far as that; I think about twelve hundred feet.

Q. Did you notice at what speed she was going at that time?

A. At the time she passed me she was stopped.

Q. And when she steamed up again did you notice what speed she took?

A. As near as I could tell she was dead slow, or as slow as she could turn over.

Q. Now, did anybody upon the "Oceanic" hail you and ask you any questions?

A. Yes, sir.

Q. What was it?

A. Some one hailed me from the "Oceanic" and asked me how the weather was inside.

Q. Did you reply?

A. Yes, sir.

Q. What did you reply?

A. I told him, "Very thick until you get to the fort."

Q. Until you get to the fort?

A. Yes, sir.

Q. And how was the weather inside of that?

A. Clear when I came out.

Q. Did you tow in this ship, the "Lord Wolseley," that morning?

A. Yes, sir.

Q. How long after the "Oceanic" passed you did you steam up?

A. The ship was at anchor at the time and I was heading the ship and they were heaving the anchor short, and the anchor was about short, and just then the "Oceanic" passed out of my sight, and I swung the ship around to come in.

Q. To come right in?

A. I think so; yes, sir, I think very likely I turned the ship around probably fifteen minutes after the "Oceanic" passed me.

Q. The weather was such at the time that you deemed it safe to tow in a large ship with your tug?

A. I considered it safe, or I should not have come in.

Q. You did not see the collision itself?

A. No, sir.

Q. When you came in did you see the "Oceanic"?

A. Yes, sir.

Q. What was she doing then?

A. She was at anchor if I recollect right, just below Black Point, a little inside the middle channel.

By the Court—Q. Where was the "Oceanic," south of you or north of you?

A. When she hailed me, sir?

Q. Yes.

A. She was south of me.

By Mr. Shay—Q. Did you notice what course she took after passing you ?

A. I think about north-east.

Q. Will you point out upon this map where the ship, the Lord Wolseley, and about where you were on that morning. This is the bay, this is the gate, and this is the ocean out here (showing).

A. I think the ship Wolseley was about here (showing).

Q. Where we have that point marked "B" is that about it?

A. I think the ship was about there as near as I can tell; as well as my memory serves me.

Q. And after the "Oceanic" passed you where was she?

A. She was about where this black line is.

Q. That was about her course?

A. I should judge she went a little north, towards the north head, as near as I could see the direction as she passed out of sight of me.

Q. She was steering and heading more towards the north than the south?

A. Yes, sir.

Q. For how long a time did you notice her?

A. I think probably about six minutes or so.

Q. And during all that time was she still pointing towards the north?

A. Yes, I should say that they were going close to the north head.

(No cross-examination).

JOHN McDONALD. Called for the defendants. Sworn.
Testified as follows:

By Mr. Shay—Q. On the 22d day of August, 1888, what was your occupation?

A. At that present trip I was engineer's store-keeper on the "City of Chester."

Q. Do you know about what time the "Chester" left its docks in San Francisco?

A. Yes, that was my place to take the time of such things; to assist the engineer on watch.

Q. At what time did it leave the dock?

A. We got the jingle bell eight minutes past nine o'clock.

Q. Did the steamship then pass out?

A. Yes; that was full speed. We had left the dock at 9 o'clock, and we got her backed out from the dock when we got the jingle bell. That is the time referred to in the log. It means, in the American phrase, "Hook her on." That was eight minutes past 9.

Q. Then eight minutes past 9, I understand you to say, the engines were started full speed ahead?

A. Yes, sir.

Q. For how long a time was that speed maintained?

A. The speed was maintained right until we got down pretty near off Fort Point. After we got full speed ahead, after we got the jingle bell, and the log that was just a very little book and a pencil, and I had no further business for working on the platform there, and I went to my business in the storeroom, which was then a part of the engine room, as it generally is in a small ship; and I could see the dials of the telegraph at times when I would

look between the columns of the engine, as I used to look through there just to see if I could see anything, and it was just about a quarter of ten, and I heard the alarm. That is where the word from the people up above comes; it rings a little bell inside, and it is an alarm for to look at the dial, and I went around in front of the engine room.

Q. What did the dial then indicate?

A. The dial then indicated "stop." The second assistant engineer had just about put his hand to do it in place of me; my not being there, and he moved it in my place.

Q. Did any other signal come after that?

A. Yes, right away; full speed astern.

Q. Between the time when the City of Chester left its dock and began to go full speed was there any signal given from the bridge to the engine room until you got this signal to stop and go full speed astern?

A. I heard none.

Q. Were you in a position where, if anything happened to come along of that kind, that you would have heard?

A. I was in the storeroom, in the back of the engine room, just over the pumps.

Q. Well, did you hear any bell ring?

A. No, sir.

Q. If an order had come from the bridge by means of this telegraph would it have rung the bell?

A. Yes, it would have made a sound, a signal.

Q. Did you feel the shock of the collision?

A. Yes, sir.

Q. How soon was it after the order was given for full speed astern?

A. Well, I took the time when we got—that was my place. I took the time. It was twelve minutes to 10 o'clock when the collision occurred; just exactly about two minutes from that.

Q. Two minutes afterwards.

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. White—Q. How long a time elapsed from the time that the signal came to stop before the signal came to full speed astern?

A. Very short time, sir.

Q. Did you take that?

A. To stop? No, sir; I wasn't there. The second assistant had the handle of the dials in his hand, and when I came around, I said, "All right," just simply to indicate that I was there.

Q. What engineer was it that heard this; who was there?

A. Mr. Comstock, the second assistant.

Q. The tall young man that was on the witness stand yesterday?

A. Yes, sir.

Q. What were you doing in back of the engine; what work did you do there?

A. Well, it was my place to be there; I was the store-keeper, and I was generally attending to little odds and ends around there; I was usually attending to little odds and ends around when I was not needed on the platform; when the ship was going out and coming in my work was at the dials to pass the word to the engineers.

Q. What business are you engaged in now?

A. I am following the business of marine engineer.

Q. Where are you employed?

A. I was employed last on the steamer "Del Norte."

Q. When was that?

A. I left her last Wednesday, a week.

Q. You still have employment with that ship?

A. No, sir.

Q. What company does that ship belong to?

A. Messrs. Hobbs & Wall.

A. At the present time you have no employment at all?

A. No, sir; I have no employment at all.

JAMES SWAN. Recalled:

By The Court—Q. Will you take the model of the "Chester" and place the rudder in the way in which you last saw it?

A. That was the way, (showing).

By Mr. White—What are you doing now?

A. I am second officer of the "San Bonito" when I am employed; I am in shore just now attending to this case.

Q. You are no longer in the employment of the O. & O. Co.?

A. No, sir.

CAPTAIN METCALFE. Recalled:

By The Court—Q. Captain Metcalfe, what was the order on board the "Chester" that would put the rudder in the position that it was placed in by the last witness?

A. Port.

Q. The order would be port?

A. Yes, sir.

Q. Then your assertion as to the helm of the "Chester" which you have testified about, would be born out by the last witness?

A. Yes, sir.

Two maps were hereupon introduced in evidence, and one was marked: "Libellant's Exhibit One," and the other "Respondent's Exhibit One."

Mr. Barnes—If Your Honor please, we have a number of other witnesses, but we consider upon consultation, that their testimony would be purely cumulative, and in view of that fact, we have decided not to introduce any more testimony to the Court and rest the defendant's case.

Mr. White—We have no rebuttal.

(The case was thereupon set for argument for to-morrow morning, Wednesday, August 14th, 1893, at 10 o'clock A. M.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Court-room, in the City of San Francisco, on Tuesday, the 10th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

Present:

The Honorable WM. W. MORROW, Judge.

HENRY F. SMITH and GEORGE C. SMITH, Infants, by ELIZA A. SMITH, their Guardian, and ELIZA A. SMITH for herself and as Administratrix of the Estate of HENRY SMITH, deceased,

vs.

OCCIDENTAL AND ORIENTAL STEAMSHIP COMPANY, a Corporation, &c.,

No. 10,732.

This cause having been heretofore submitted to the Court for consideration and decision, now, after consideration had thereon, the Court renders its opinion, and it is by the Court ordered that libellants have and recover from the respondent, the Occidental & Oriental Steamship Company, the sum of ten thousand dollars, and costs, and further ordered that a decree in conformity herewith be duly drawn and entered.

*In the District Court of the United States in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH AND GEORGE C.
SMITH, Infants, by Eliza A.
Smith, their Guardian, and Eli-
za A. Smith, for herself and as
Administratrix of the estate of
Henry Smith, Deceased.

Libelants.

vs.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY, a corporation,
AND PACIFIC COAST STEAMSHIP
COMPANY, a corporation,

Respondents

No. 10,732.

AND

ELIZA A. SMITH,
Libelant,

vs.

OCCIDENTAL AND ORIENTAL
STEAMSHIP Co., a Corpora-
tion, and PACIFIC COAST
STEAMSHIP Co., a Corpora-
tion,

Respondents.

No. 10,733.

Actions seeking damages for loss of life under sections
376 and 377 of the Code of Civil Procedure of the State

of California, alleged to have been sustained through and by the wrongful acts and negligence of respondents.

CLINTON L. WHITE and WILLIAM H. COBB, proctors for libelants.

W. H. L. BARNES, and FRANK SHAY, proctors for respondents, Occidental & Oriental S. S. Co.

MORROW, District Judge.

On the morning of August 22d, 1838, between 9 and 10 o'clock, a collision took place in the entrance of the Bay of San Francisco, between the steamships "Oceanic" and "City of Chester." The latter vessel was sunk and became a total loss, and several passengers on board of her lost their lives. Among those were Henry Smith and his daughter, Myrta Smith. Two actions were instituted in this Court against the Occidental & Oriental Steamship Company and the Pacific Coast Steamship Company, owners, *pro hac vice*, of the "Oceanic" and "City of Chester," respectively, as co-defendants, to recover damages for the death of these two persons; one of the suits being brought under section 377 of the Code of Civil Procedure of the State of California, by Eliza A. Smith, as administratrix of the estate of the deceased Henry Smith, for herself, and on behalf of Henry F. and George C. Smith, infants, and children of the deceased, as their guardian, praying judgment for the sum of \$75,275; the other suit being brought under section 376 of the same Code, also by Eliza A. Smith, to recover damages for the death of Myrta Smith, an infant daughter of the plaintiff, in the sum of \$20,000. These actions were brought originally with a view of the plaintiffs availing themselves of such common-law remedy as this Court could afford by

virtue of the judiciary act; but by stipulation entered into between the parties, and filed September 7th, 1893, it was agreed that these two actions were admiralty causes, *in personam*, and should be treated as such. The causes were thereupon transferred from the common-law to the admiralty side of the Court; all objections and exceptions to the form of such proceeding, or of any proceeding prior thereto, as not being in accordance with the admiralty rules and practice of this Court, being expressly waived. It was further stipulated in open Court that the two causes should be consolidated for the purposes of trial, and that separate judgments might be awarded in the cases.

On the 1st of September, 1890, the Pacific Coast Steamship Company, as charterer and lessee of the City of Chester, filed a petition in this Court for a limitation of its liability under sections 4282-4289, Rev. St. U. S. Thereafter such proceedings were had that a decree was entered giving the Pacific Coast Steamship Company the benefit of a limitation of its liability, and fixing the extent of such liability at \$75—the appraised value of a small boat saved from the wreck of the City of Chester. In view of this fact the libelants, on November 9, 1892, dismissed their actions as to the Pacific Coast Steamship Company, and thereupon the liability of the City of Chester was eliminated from the case; but her conduct at and prior to the catastrophe remains for the consideration of the Court, in determining whether or not the libelants are entitled to a judgment against the Occidental and Oriental Steamship Company, the only remaining respondent.

The Oceanic is a four-masted steamer of 3,808 tons register, with a length of 438 feet, a beam of 40 $\frac{3}{4}$ feet, and

a draught of 25 feet. She had been engaged in making voyages between the port of San Francisco and the ports of Hongkong and Yokohama. She was thoroughly equipped and appare'ed, completely officered and manned, and in every respect a staunch and seaworthy vessel. On the morning of the collision she was entering the harbor of San Francisco, having just returned from one of her periodical trips to China and Japan. She carried, in addition to her cargo, about 1,000 passengers. She was leased by the White Star Company to the Occidental and Oriental Steamship Company. The City of Chester was a steamship leased to and operated by the Pacific Coast Steamship Company. She was used in the coasting trade, and at the time was running between this port and that of Eureka, in this State. She had a gross tonnage of about 1,100 tons and a net tonnage of about 850 tons; was about 205 feet in length, 32 feet in beam, and 16 feet in depth. On the morning of the collision she was just proceeding on one of her regular trips, laden with freight and passengers, and was making her way out of this port.

For the purpose of a better understanding of the testimony in the case, it may be well to notice at the outset that the collision involved four possible situations: (1.) The collision may have been the result of inevitable accident, in which event the respondent would not be held liable for the consequences. (2.) The "City of Chester" may have been wholly at fault, and the "Oceanic" blameless, and the respondent therefore not liable. (3.) The "City of Chester" may have been blameless, and the "Oceanic" at fault, and the respondent therefore liable. (4.) Both the "City of Chester" and the "Oceanic"

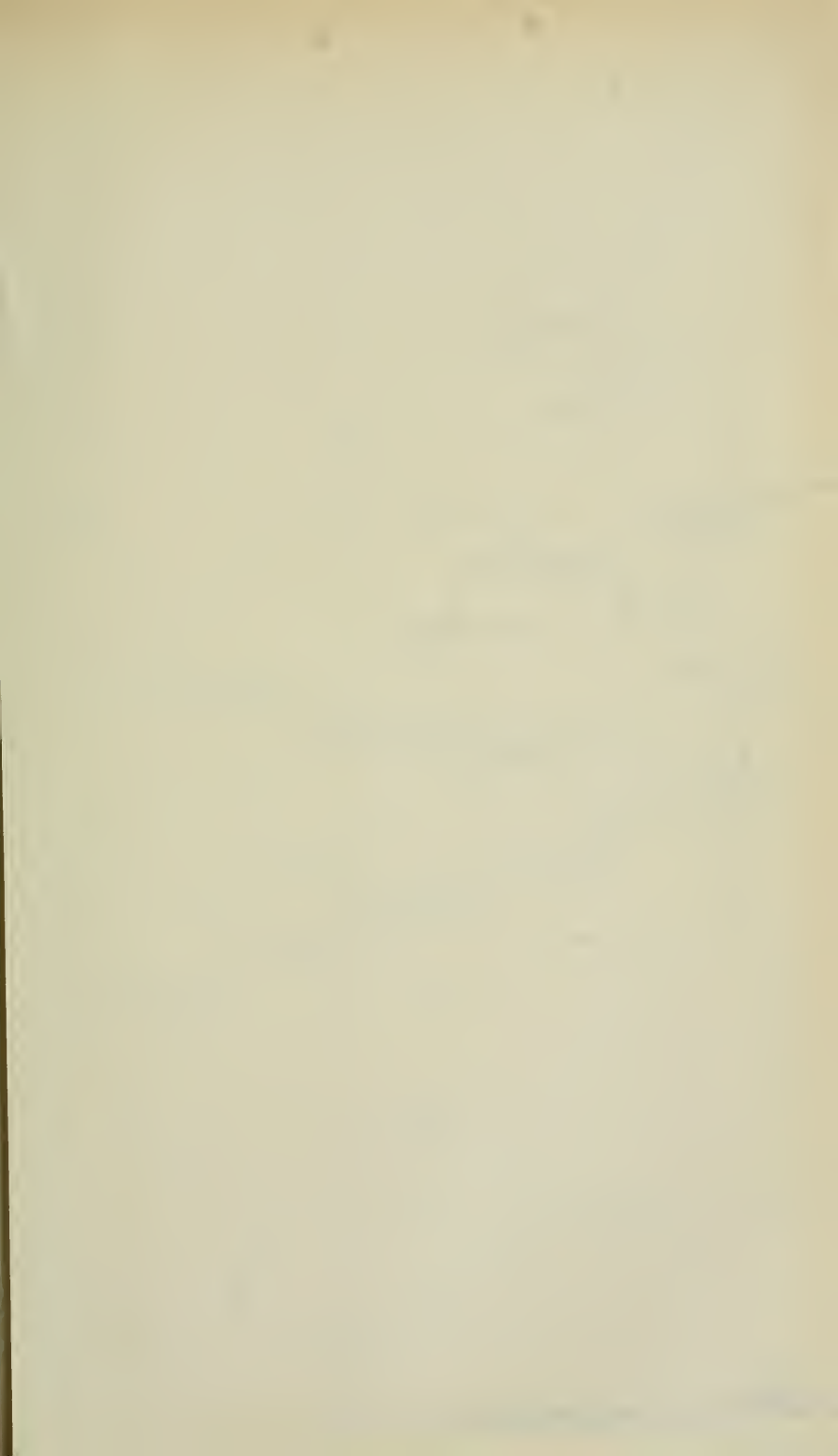
may have been at fault, and the respondent, therefore, liable.

Ward v. The Ogdensburgh, 5 McLean, 622 Fed. Cas. No. 17, 158.

The first situation is not pleaded as a defense, or relied upon, by the respondent. It remains, therefore, for the libelant to establish either the third or fourth situation. The respondent claims that the proofs show that the collision took place notwithstanding the "Oceanic" endeavored, by every means in its power, with due care and caution, and a proper display of nautical skill, to prevent the disaster. Reducing the controversy to its simplest terms, for the present purpose, it may be stated briefly, that the libelants claim that both the "City of Chester" and "Oceanic" were at fault, as indicated in the fourth situation, and the respondent contends that it is excused because the "Oceanic" was not at fault, as indicated in the second situation.

The collision took place between half-past 9 and a quarter of 10 on the morning of August 22, 1878, at the inner entrance to San Francisco bay, known as "Golden Gate Channel." It occurred at some point between Fort Point and the land opposite, known as "Lime Point." The precise locality, owing to the fog then prevailing, and the conflicting testimony on that point, is somewhat involved in doubt, and can only be determined approximately. For a better understanding of the locality, and the movements of the two vessels, reference may be had to the accompanying map:

The width of the channel, where the collision took place, is stated to be about seven-eighths of a nautical



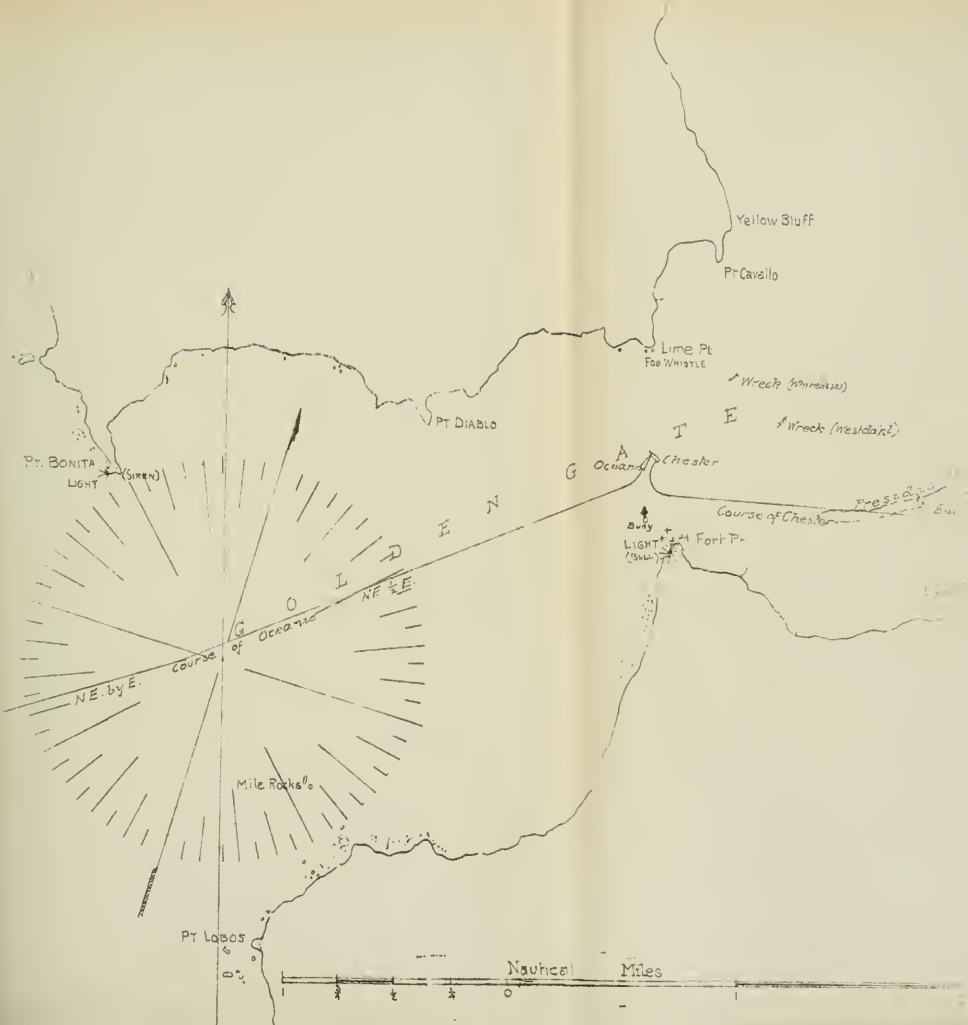
may have been at fault, and the respondent, therefore, liable.

Ward v. The Ogdensburgh, 5 McLean, 622 Fed. Cas. No. 17, 158.

The first situation is not pleaded as a defense, or relied upon, by the respondent. It remains, therefore, for the libelant to establish either the third or fourth situation. The respondent claims that the proofs show that the collision took place notwithstanding the "Oceanic" endeavored, by every means in its power, with due care and caution, and a proper display of nautical skill, to prevent the disaster. Reducing the controversy to its simplest terms, for the present purpose, it may be stated briefly, that the libelants claim that both the "City of Chester" and "Oceanic" were at fault, as indicated in the fourth situation, and the respondent contends that it is excused because the "Oceanic" was not at fault, as indicated in the second situation.

The collision took place between half-past 9 and a quarter of 10 on the morning of August 22, 1858, at the inner entrance to San Francisco bay, known as "Golden Gate Channel." It occurred at some point between Fort Point and the land opposite, known as "Lime Point." The precise locality, owing to the fog then prevailing, and the conflicting testimony on that point, is somewhat involved in doubt, and can only be determined approximately. For a better understanding of the locality, and the movements of the two vessels, reference may be had to the accompanying map:

The width of the channel, where the collision took place, is stated to be about seven-eighths of a nautical



Pt. BONITA LIGHT (Siren)

PT DIABLO

LIME Pt FOG WHISTLE

Yellow Bluff
Pt Cavillo

Wreck (Wharves)

Wreck (Mast)

G A I E
Oceano Chester

Course of Chester

POSSIBLE

Buoy LIGHT (Sh)

Fort P

Course of Oceanic

NE by E

Mile Rocks

PT LOBOS

Nautical Miles

mile, or, by chart measurement, about 5,200 feet. It is the narrowest point in the channel, and the whole body of water is navigable almost from shore to shore. The sea, on the morning, was calm. The tide was flood. The pilot on the "Oceanic" fixes low water at 6:15 in the morning. Ferdinand Westdahl, of the coast and geodetic survey, fixes low water, by the tide tables, at 5:53. The difference is immaterial. At the time of the collision the flood tide had been running in for about three hours and a half, or nearly four hours. The testimony shows that in entering the channel the young flood tide makes in along the south shore, striking the land just outside of Fort Point, and from there deflects, and sheers off across the channel, nearly due north, towards Lime Point, until it reaches about mid-channel,—sometimes beyond it, depending upon the force of the current,—where it resumes the same course as the true tide coming in mid-channel. The evidence shows that there is a tide rip of considerable force from Fort Point to mid-channel, deflecting the course of vessels entering it, and making it necessary that in crossing the current outward, they should starboard their helms, to make the rip and preserve their courses.

The testimony presents an irreconcilable conflict as to the place of collision. The evidence introduced by the libelants in relation to the outward course of the City of Chester along the south shore of the bay, the distance and bearing of objects on the shore, and the location and effect of the crossing tidal current near Fort Point, would fix the place of collision at a point considerably south of mid-channel. On the other hand, the evidence introduced by the respondent in relation to the inward course of the

“Oceanic” along the north shore to the entrance of the harbor, and the distance and bearings of points on shore, would fix the place of collision some distance north of mid-channel. These two points would be about 3,000 feet apart. It is manifest, therefore, that if these two vessels were pursuing the course indicated by the testimony relating to each, a collision was impossible; but a collision did occur, and for the purpose of understanding the movements of the two vessels at and prior to the collision it becomes necessary to determine as near as possible the place of its occurrence.

The course claimed by the pilot and captain of the “Oceanic” is, briefly, as follows: The “Oceanic” had arrived off the entrance to San Francisco bay early on the morning of August 22, 1888. She made for the whistling buoy, where the pilot grounds are situate, near which she took up the pilot, Louis Meyer, about 8 o’clock. The pilot steered the vessel in for the whistling buoy, which was picked up and passed on the north side, according to the testimony of the pilot, about $1\frac{1}{2}$ miles off, and, according to that of the captain, about a half a mile away. It was there that the course of the “Oceanic” was first shaped northeast by east for the entrance. The weather as stated above, was foggy; densely so at times, and less so at others. The sea was calm. The pilot and captain consulted together as to the advisability of entering the harbor under the conditions then prevailing. They deemed it safe to make the attempt, taking adequate precautions, in proceeding at a very slow rate of speed, blowing the fog whistle, and keeping a sharp lookout. About mid-way between the whistling buoy and Point Bonita,

they passed the ship "Lord Wolseley," which was lying at anchor somewhat north of mid-channel. A tug had just come up, and was preparing to tow her in. The pilot states that he "steered a little towards her," and asked the master of the tow boat the kind of weather there was inside, but the answer, on account of the distance between them, could not be understood. The master of the tug fixes the distance at which the "Oceanic" hailed him as, approximately, a quarter of a mile. Proceeding on, Point Bonita, or, as it is sometimes called North Head, was passed about a half a mile off. According to the testimony of the pilot and captain, its form was just perceptible to the naked eye, although Tillston, the first officer, who was on the lookout, states that he did not see it. At this point the engines were put "dead slow," which meant a speed of about four knots an hour,—just enough to give her steerage-way. At the same time the course of the vessel which hitherto had been N.E. by E., was altered one-half point to the N., making it N. E. $\frac{1}{2}$ E. Point Bonita, as testified by Pilot Meyer, was made about 9:19 o'clock. It was then that the two orders just referred were given—one to the engineers to go "dead slow," and the other to the wheel, to port half a point. Point Diablo was passed eight minutes later, as fixed by the pilot. The same rate of speed, "dead slow," was maintained all this time. Point Diablo could be more clearly discerned than Point Bonita. The witnesses state that it was all the way from a quarter to a half a mile. It was between these two points—in the neighborhood of Point Bonita—that the pilot and officers of the Oceanic first detected the fog whistle of an outcoming

steamer. The direction from which the sound of the whistle proceeded indicated that the approaching vessel was some three points on their starboard bow; that she was on the inside of the harbor and had not reached the channel; and furthermore, that her course with relation to that of the Oceanic did not seem to change materially. After passing Point Diablo, as the fog signals of the approaching vessel grew more pronounced, a sharp lookout was kept off the starboard bow. Presently the Captain of the Oceanic discovered the dark mass of a hull looming up in the fog about two and a half to three points on his starboard bow. Tillston, the first officer, who was stationed at the bow, on the lookout, had also discovered the presence of the vessel, which proved to be the City of Chester, and had communicated that fact to the bridge. The first officer fixes the distance between the two vessels when he first discovered the City of Chester as between 600 to 800 yards (1,800 to 2,400 feet); the pilot, at about a half a mile; the Captain, at about a half a mile. Bridgett, the second officer, who was on the bridge, estimates the distance as also about a half a mile. Swan, the third officer, who was at the helm, places the distance when he first saw her at also about a half a mile. The position of the City of Chester with reference to the Oceanic was two and a half to three points on the starboard bow of the latter, the former vessel's bow pointing directly amidships of the Oceanic. Captain Metcalfe testified: "She was heading right for us, straight; all masts and funnel in line. If anything, we could see probably a little more on the starboard bow." "I should say she was on our starboard bow. She was end on to us. We were never at any time

end on to her." "She was so nearly end on that you might call it end on." "Heading right for our bridge apparently." Immediately upon seeing the form of the City of Chester emerging through the fog the order was given by the pilot to blow two whistles, indicating that the Oceanic would go to the left. At the same time the helm was put hard astarboard. Tillston heard the order given. Bridgett did also. Captain Metcalfe testifies that the helm was put hard astarboard at the same time the first signal was given, and he says further: "The ship, not having much way on her, turned gradually and slowly to port," Again he says: "The ship was going at very slow speed, and naturally she took a long time to move. She did move to the left, but how much I cannot say—not sufficient to entangle the ship going onto the shore." The question being asked, "Is that a factor in it—the fact of her going dead slow?" he answered: "She would take much longer to do it; that is all." Q. But not any more water? A. I don't know that she would. It is only an assumption on my part. As I have told you, we never experimented." He says further: "The helm having been starboarded, the ship altered her course probably a point or a point and a half to the north." The City of Chester answered these two whistles of the Oceanic almost immediately after. She blew two whistles, as indicating that she acquiesced in the proposed maneuver and would do the same. But it appears, as we will discover later on, that the City of Chester had not yet caught sight of the Oceanic, nor did she do so until a collision was unavoidable. The Oceanic, as stated above, answered her helm but slowly. The course of the City of Chester did not

seem to change to the left to any appreciable degree, as it should have done. On the contrary, as the vessels approached she seemed to swing to the right. She was watched closely by the pilot and Captain of the Oceanic. A short time expired, fixed at about two minutes by the witnesses, during which the vessels were approaching each other all the time; and it was observed by those on the Oceanic that the City of Chester was going gradually to the right instead of to the left. In view of this fact, the pilot gave a second order to blow two whistles, which was immediately acknowledged by the City of Chester with two, also. The pilot and the Captain of the Oceanic, finding that after the second signal had been assented to by the City of Chester she still failed to respond to her starboard helm and to alter her course as she had promised to do, gave the order to go full speed astern. Then the collision was a foregone conclusion. The engines were full speed astern for a very brief time—about two or two and a half minutes—overcoming in some degree the forward speed of the Oceanic, which was about four knots, exclusive of the flood tide, when that vessel crashed into the City of Chester on the latter's port side, some twenty feet abaft her bow, penetrating to a depth of about ten feet, or about one-half the beam. The engines of both vessels were stopped, and the Oceanic was kept impaled in the breach she made in the City of Chester so as to keep the latter vessel, which was filling fast with water, afloat. The boats of the Oceanic were immediately lowered, and every effort was made by the officers and crew of the Oceanic to save life. Both vessels, while thus impaled, drifted with the tide towards the inside of the

entrance. They drifted for some five or six minutes, when, finding that the City of Chester could no longer be kept afloat, the Oceanic backed a little and the City of Chester sank.

The course and maneuvers of the City of Chester, as testified to by her Captain, officers and passengers, was substantially as follows: She left Broadway wharf about 9 o'clock on one of her periodical trips to Eureka, and was put under full speed, which was about ten knots. On account of the fog which prevailed to the north, Captain Wallace followed rather closely the south shore of the bay, passing, as he says, about 150 feet inside of Presidio Shoal buoy. About here he commenced to enter the fog—hitherto he had been running on the edge of it—and, as the vessel penetrated further, “it got very thick.” He states that he ran into the fog about half way between the Presidio Shoal buoy and the Fort. He testifies that he steered the usual course to clear the Fort. Upon entering or just after having entered the thick fog, the steamer was slowed down to half speed. Either before or almost immediately after this order had been communicated to the engineer in charge, two whistles of an approaching steamer were heard off the starboard bow. The Captain responded with two, signifying that he would go to port, thus acceding to the proposed maneuver. The helm of the City of Chester was then placed hard astarboard to conform to the signal. At this time he had not seen anything of the Oceanic, but he had heard her fog signals for some time previously; in fact, he did not obtain sight of the Oceanic until after the second signal had been answered by him. He testifies that a good lookout was being kept. Lun-

dine, the second officer, was on the lookout, and supplements the Captain's testimony that the Oceanic was not seen until after the second signal to go to port had been answered by the City of Chester. The time is approximated at less than a minute after the second signal. The reason assigned by the Captain for not seeing the Oceanic before, was the thickness of the fog: "It was so foggy we couldn't see her." After the first interchange of signals, the City of Chester proceeded a little further on, her speed not being checked, when the Captain heard the approaching vessel blow two more whistles—a repetition of the signal to go to port. He answered these, also, with two, indicating his assent. Almost immediately after—certainly less than a minute as fixed by the Captain—he caught sight, for the first time, of the Oceanic. She loomed up out of the fog one and a half or two points now on his port bow. He immediately saw that a collision was inevitable, and rang the indicator full speed astern, and let the flood tide take her bow, her stern being still in the eddy, and let her swing right around. In less than two minutes from the order to go full speed astern, the Oceanic ran into the City of Chester on the latter's port side, about twenty feet from her bow, penetrating a distance of about ten feet, as before stated. As soon as the concussion took place the engines were stopped. The vessel filled rapidly, and, after drifting for some five or six minutes, sank at some distance from the place of collision.

It will be noticed that these two sets of narratives agree substantially with each other as to what took place at, and just previous to, the collision. In fact, on most points, excepting, notably, the place of collision, they are corro-

borative of each other. There is no conflict as to which vessel first became apprised of the other's presence,—that the "Oceanic" first sighted the "City of Chester," while the latter did not see the former until after the second signal had been exchanged, and the collision was inevitable. There is no real conflict as to the relative positions of each vessel when they first became aware of each other's proximity,—that the "City of Chester" was on the "Oceanic's" starboard bow from $2\frac{1}{2}$ to 3 points. There is no contradiction as to the signals exchanged, and the measures adopted by both in pursuance of such signals, that the "Oceanic," having first caught sight of the "City of Chester," with that vessel on her starboard bow, took the initiative, and elected to starboard her helm, and go to port; that she gave the required signal, of two whistles, to communicate such election, which was assented to by the "City of Chester" with two whistles; that both vessels thereupon placed their helms hard astarboard; that the "Oceanic" answered her helm but slowly, while the "City of Chester" did not respond to hers at all, on the contrary, went to starboard instead of to port; that the "Oceanic," perceiving that the "City of Chester" did not take the course agreed upon, gave a second signal, of two whistles, to go to port, which the "City of Chester" likewise answered with two whistles, indicating that she would do so; that almost immediately after the second signal the "City of Chester," for the first time, caught sight of the "Oceanic," and that then that vessel was $1\frac{1}{2}$ or 2 points on the former's port bow; that then, both seeing that a collision was inevitable, went full speed astern for $1\frac{1}{2}$ or 2 minutes; that the effect of full speed astern with the helm

hard a-starboard was to throw the bows of both vessels to the right, particularly the "City of Chester," which had the flood tide against her port bow; that when the order to reverse was given the "City of Chester" was either in the tide rip, or was just entering it; that the vessels came together nearly at right angles, the "City of Chester" heading northerly, and the "Oceanic" easterly; that the "Oceanic" ran into the "City of Chester" on the port bow of the latter, some 20 feet abaft the port bow, and penetrated about one-half of the beam of that vessel; that both vessels thus impaled, drifted towards the inside of the entrance, with the flood tide, for about five or six minutes, when the "City of Chester" could no longer be kept afloat, and sank. About all these facts there is no dispute. What may seem apparent contradictions are readily explained. But as before stated, there is an irreconcilable conflict as to the place of the collision. The respondent claims that the collision took place nearer to the north than to the south shore, and fixes the distance as about a quarter of a mile from Lime Point, in a southerly direction, while the captain, officers and passengers of the "City of Chester" fix the collision as having occurred near Fort Point,—the point opposite Lime Point,—the captain estimating that the collision took place from 600 to 650 feet from Fort Point, nearly due north from that point about one-eighth of a mile. The course pursued by both vessels anterior to the collision would be important factors in determining the locality of the collision. But the testimony on this point, instead of assisting the Court, only involves the question with more perplexity; for, according to the testimony of the pilot and officers of the "Oceanic,"

the course pursued, or intended to be followed, by this vessel in entering the harbor, would have been along the north shore of the channel, and would bring the vessel to the point of collision as fixed by them, viz., about one-quarter of a mile from Lime Point; while, on the other hand, according to the testimony of the captain of the "City of Chester," the latter vessel hugged the south shore on account of the fog. The captain of the "City of Chester" states that he steered the usual course to clear Fort Point, and fixes the place of collision, as above stated, at about 600 to 650 feet off Fort Point,—north, or nearly so. Had both vessels pursued, up to the time of the collision, the course said to have been followed by each they would certainly have cleared each other by at least a half a mile. But the fact remains that a collision did take place, and it is certain that either or both accounts of the courses steered, with reference to the place of collision, must be incorrect.

The pilot, Captain and officers of the Oceanic testify to a course steered by that vessel, tracing it from the time when the pilot headed the vessel N. E. by E. for the entrance until the time of the collision, the object of which is to show that they brought the vessel in north of mid-channel, and that their line of progress, as delineated on the map introduced by counsel for respondent, is directly in the line with the place of collision as fixed by them. They seek to do this by describing a course pursued by the Oceanic from the whistling buoy, and by estimating the distances at which that vessel was when off to the northward of the whistling buoy and the distances at which Points Bonita and Diablo were passed. This method

of ascertaining the place of collision would be of value if the distances were accurately estimated. The difficulty is that the witnesses themselves do not agree as to the distance of the Oceanic from the whistling buoy when her course was first shaped for the entrance, nor do they agree as to the distances at which Point Bonita and Point Diablo were passed. Pilot Meyer testifies that when he first shaped the course of the Oceanic N. E. by E. for the entrance he was about one and a half miles northeast of the whistling buoy, while Captain Metcalfe fixes the same distance as about a half a mile. Both witnesses had equal powers of observation so far as the evidence shows. Making due allowance for the fact that both estimates were approximations, under somewhat difficult conditions in view of the prevailing fog, yet the discrepancy is not reconcilable. The same infirmity exists as to the estimates of the distance at which the witnesses claimed that they passed Points Bonita and Diablo. The pilot and Captain Metcalfe swear that Point Bonita was passed about one-half of a mile off; that they could see the loom of it through the fog; while Tillston, the first officer, who was on the lookout, states that he did not see Point Bonita. As to the distance at which one could see, he testifies: "Before we got to Point Bonita I should say we could see fully a quarter of a mile, as we passed a big sailing ship lying at anchor. As we got inside from Point Bonita it cleared away, and I imagine I could see half a mile, and so it continued up to the time of collision." It was on passing this point that the course of the Oceanic was altered one-half a point to the north, and the pilot says: "With that course we made Point Diablo very plain—

not more than from one-quarter to one-half a mile." Captain Metcalfe says they could see Point Diablo pretty well. On the other hand, first officer Tillston, who was all this time on the lookout, says he could just see the loom of Point Diablo, and being asked to fix the distance, says, "I should imagine from the state of the fog that it would be one-quarter of a mile." These inconsistencies do not command to the Court the accuracy of the course claimed by counsel for respondent as the true one, and as going to show that the collision must have occurred where they claim it did, viz: about one-quarter of a mile south from the north shore or Lime Point. This contention is not only flatly contradicted by Captain Wallace and opposed to the testimony of the officers and passengers on board the City of Chester, who agree in fixing the place of collision as at some point near Fort Point, and certainly south of mid-channel, but by the testimony of the pilot of the Oceanic, himself, it is very questionable whether the collision occurred as far north of mid-channel as the testimony of Captain Metcalfe and of the second officer, Bridgett, would have it. He (the pilot) testifies as follows :

" Q. As near as you understand the position of the " Oceanic, you were north of mid-channel? A. Yes, " sir. Q. This is the position that you put the Oceanic " in at the time of the collision? A. Yes, sir. Q. " About how far would that place be where the collision " occurred from mid-channel? A. It must have been " very near. Q. Very near mid-channel? A. She " must have been very near mid-channel. Q. Then you " you were coming in very near mid-channel? A. No,

“sir; the Chester. I was on the north side. Q. We
 “will agree to this, that the Oceanic was here when the
 “collision occurred (pointing). A. Yes, sir. Q. Now,
 “I want to know how far this point of collision is from
 “mid-channel? A. Pretty close.”

The witness subsequently states that they were a quarter of a mile from the north shore. But this testimony is plainly inconsistent with the statement cited above. It is to be observed, further, that Captain Metcalfe testifies that when he first sighted the City of Chester she was about one-half a mile off, and the Oceanic was then about one-quarter of a mile from Lime Point. He was asked how it was that, having his helm hard a starboard, he avoided running into the north shore, when he was only a quarter of a mile away from it, and the City of Chester was a half a mile distant; and he answered by saying that the Oceanic was going at a very slow rate of speed, and naturally took a long time to move. She did move to the left, but how much he could not say,—not sufficient to endanger the ship going onto the shore. This reply is susceptible of one or two constructions: Either he was much further toward mid-channel, or to the Fort Point side of mid-channel, than he himself was willing to admit, or else the Oceanic was so slow in answering her helm as to be unwieldy. The captain says that he could see the white fog signal on Lime Point landing plainly, and second officer, Bridgett, fixes Lime Point when the collision took place at less than one-fourth of a mile away. But, on the other hand, Captain Wallace of the City of Chester is equally positive of his statements, and estimates the distance of the collision from Fort Point at

600 to 650 feet nearly north of that place. He testifies as follows:

“Q. How far off from the south shore did this collision occur? A. From Fort Point, do you mean? Q. Yes, from Fort Point—from the south shore? A. Well, there is 150 feet off the buoy. Probably about from 600 to 650 feet off Fort Point. Q. In what direction? A. North; nearly north. Q. Had you or hadn't you passed the buoy? A. No, sir; we hadn't passed the buoy.”

Subsequently Captain Wallace states that although the fog was very thick around Fort Point, he saw this buoy just when the *Oceanic* loomed up. He states that it was 100 or 150 feet on his port bow.

The other witnesses who testify that the collision took place south of mid-channel, or near Fort Point, do not pretend to fix, with any degree of accuracy, the place of collision. The passengers who testified—those who are disinterested as well as those who might be supposed to have an interest in the result of the case—agree that it was south of mid-channel, but exactly where does not appear. Furthermore, it is to be observed that their estimates of distances are subject to the same objection pointed out in commenting on the testimony of the pilot, captain and officers of the *Oceanic*. They are all approximations, given under the difficult conditions attending observations in a thick, drifting fog.

Charles McCullom, the first officer of the *City of Chester*, testified that it was clear until they got opposite to the Presidio; that then he went below. On hearing two whistles, and those followed by two more, he came up on

deck, and then the Oceanic was about fifty feet away. As to the place of collision, the witness says that when he came up he could not see land on either side. He guesses that both of the vessels were nearer Fort Point than Lime Point.

John Lundine, the second officer of the City of Chester, who was stationed at the bow of this vessel, states that upon hearing the whistles, which was some few minutes previous to the collision, they were not quite up to Fort Point, but pretty close to it. He does not know the position of the City of Chester exactly. He says that he didn't notice how far from the south shore they were. He could see the south shore, but whether he saw it directly south he does not say. But he testifies that if they had gone along their old course they would have been within a ship's length of the buoy. This witness does not seem to have taken particular notice of the place of collision.

Rufus Comstock, the second engineer, states that the first land he noticed after getting into one of the Oceanic's small boats, was Fort Point. As to the distance, he says:

“ I didn't notice exactly, but I know that we were not very far. I shouldn't think it could have been a quarter of a mile. I don't think it was over a quarter of a mile. I know that we were pretty close into Fort Point buoy—must have been at the time of the collision.”

This fact he noticed about five or six minutes after the collision.

James Rankin, the keeper of the Fort Point lighthouse, at the time of the collision was about 200 feet from the extreme point of the Fort; 200 feet due south; up on the high ground; on the bluff. He states that he did not see

the collision (he could not on account of the fog), but gives his impression as to the respective courses of each vessel by means of the whistles; first their fog signals and then their double whistles to go to port. From the sound of these he judged that they were coming close to Fort Point, and, apprehensive that something serious would result, he paid close attention. He says he heard the crash. The weather at the time of the collision was very thick. He could not see the flagstaff on the Fort—not even the Fort itself. He does not pretend to be able to fix exactly, or at all, except in a general way, the place of collision. He testifies: “I would judge, drawing a line from Fort Point to Lime Point, it to be one-third of the distance across, and about one-quarter of that distance towards the city.”

Clitus Barbour, a passenger on board of the City of Chester, says that he could not tell exactly where the collision occurred, but he thinks they were nearly off Fort Point. He says they drifted some distance down the harbor in a small boat. He refers to the fact that in passing the Presidio he could see the buildings, wharf, etc., and says that if there was any fog it was out beyond. As to the relative distance between the two shores where the City of Chester went down after having drifted for five or six minutes, he says: “My own notion was— It is somewhat confused in my mind, but it appeared to me further to the Saucelito shore than it was to this shore.”

The effect of the flood tide appears to have some bearing in determining the place of collision. The tide rip near Fort Point is caused by the cross current of the flood tide. That the City of Chester was in this tide rip, or was just en-

tering it, is almost certain. This is attested by two facts: First, the fact that the vessel failed to answer her starboard helm and went to starboard instead of to port. The testimony shows that the tide was running at about a five-knot speed at this point, and that it sets so strongly across the entrance towards mid-channel that vessels, in order to make the rip, starboard their helms. In other words, the natural sheer of the tide would be to carry a vessel to the right or towards mid-channel. Captain Metcalfe thus states the influence which the flood tide has on vessels about to cross it in that locality: "If her helm had been starboarded then, which is usually done by every steamer going out of the port on flood tide in order to make that rip, she would have recovered herself very quickly and gone on about her business." Therefore, the fact that the City of Chester failed to respond to her starboard helm, in view of the positive testimony of her Captain that he placed her helm hard astarboard and kept it there from the very first signal, is accounted for or explained by the force and action of this tide rip upon vessels crossing it. Again, the rapidity with which the City of Chester was turned to the right when her engines were placed full speed astern is also explained by the action of the tide rip. The very fact that the vessels collided almost at right angles—the Oceanic running into the port side of the City of Chester some twenty feet abaft her bow—when, some two minutes before the collision, the Oceanic had the City of Chester on her starboard bow, indicates that the force of the current must have been an efficient cause in thus radically changing the positions of the vessels. The additional fact that the Oceanic, in going full speed astern

with her helm hard astarboard, the result of which combination would be to send her to the right, while the fact was that she did not turn very much in that direction, as compared with the turn which the City of Chester made, action on the part of the Oceanic attributable to the force of the current she had to contend against, indicating that she was also in or near the tide rip or cross current.

Considerable stress is laid by both sides upon the testimony of T. P. H. Whitelaw, called for the respondent, and F. Westdahl, called for the libelants, as both of these witnesses undertake to fix exactly the place where the wreck of the Chester was found. T. P. H. Whitelaw, engaged in the business of wrecking, testifies that on the day of the collision he went to ascertain where the Chester lay. He states that he found where she was by oil coming up to the surface of the water, and made a mental note of the bearings of the wreck. Some two years after he went out, accompanied by Bridgett, the second officer of the Oceanic, to ascertain again the position of the wreck. He says that the only bearings he had to go by were those which his memory afforded him from his investigations on the day of the collision. Using these, he states that he struck the wreck at the first sounding. She was then situated about three-fifths of the distance towards Lime Point, somewhat towards the inside of the harbor; that is two-fifths of the distance from the north shore and three-fifths from the south shore, or Fort Point.

Ferdinand Westdahl, a master mariner connected with the United States coast and geodetic survey, made investigations to ascertain the position of the wreck. He experimented by drifting with a tug on a flood tide, to fix

upon the approximate place of the wreck. He made three drifts, starting approximately from where Capt. Wallace fixed the place of collision. Each drift brought him close to mid-channel, and considerably inside of the harbor. With this data, he searched for the wreck. He says :

“ He swept along the bottom with a line weighted with grate bars and window weights until we finally caught on to what we supposed was the City of Chester,—the wreck of her. I determined where she was then, or what we supposed was the City of Chester,—where it lies.”

He located the wreck very nearly in mid-channel, while Whitelaw fixes the location of the wreck further to the north, but not quite so far inward. Respondent claims that Whitelaw's location must be correct, because it is more in the line of progress of the course of the *Oceanic* up to the time of the collision than that of Westdahl. It is not denied that the *Oceanic* and *City of Chester*, while impaled, drifted for some distance inward, on the flood tide, in the short space of five or six minutes. There were several forces which undoubtedly operated to finally deposit the wreck of the *City of Chester* at a point to the northward and eastward of the place of the collision. The *City of Chester* was, at the time of the collision, going nearly straight across the channel, and the *Oceanic* was coming nearly straight across the channel, and the *Oceanic* was coming in on a course N.E. $\frac{1}{2}$ E., with her helm hard a-starboard. The point of collision was at the bow of the *Oceanic*, and near the bow, and on the port side of the *City of Chester*. The force of the collision was such that

the bow of the Oceanic cut into the City of Chester about 10 feet, or about halfway through the vessel. This propelling force was therefore inward and northward. The flood tide of Fort Point sheers across the entrance towards mid-channel, and then flows inward on nearly a straight course. This force was first northward, and then inward. In view of these conditions, we should expect to find the wreck of the City of Chester to the north and inward of the place of collision, and hence it is that we infer that the collision took place near mid-channel; but since we cannot hope to fix the place of collision with absolute certainty, it does not seem necessary to determine which of these two wrecks shall now be considered the remains of the City of Chester.

After a careful examination of all the evidence, aided by the inferences arising out of the natural probabilities attending the situation, I have reached the conclusion that the collision took place somewhere near mid-channel, but nearer Fort Point than Lime Point. This determination necessarily places the inward course of the Oceanic a little to the south of that delineated on the chart or map introduced by the respondent: but it is a course that accounts for the collision in accordance with what appears to me to be the established facts in the case, and particularly the actions of the two vessels.

The point of collision having been established as nearly as possible, we proceed now to consider the conduct of the two vessels and the law of the road applicable to their movements. Section 2360 of the Political Code of this State provides the following rule of navigation:

“When steamers meet, each must turn to the right, so as to pass without interference.”

Section 970 of the Civil Code provides as follows :

“ (1) Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction so that if both ships were to continue their respective courses, they would pass so near as to involve risk of collision, the helm of both ships must be put to port so as to pass on the port side of each other. (2) * * * (3) A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of the steamer. (4) A steamer, when passing another steamer in such channel, must always leave the other upon the larboard side. (5) When steamers must inevitably or necessarily cross so near, that by continuing their respective courses there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.”

Both vessels elected to violate these rules, and attempted to pass each other starboard to starboard, and a collision was the result. As the *Oceanic* was the first to depart from the rules, she took the risk of passing in safety ; and, failing in the movement, the law holds her in fault. *The Columbia*, 29 Fed. 716 ; *The Rockaway*, 38 Fed. 856, affirmed 43 Fed. 544 ; *The Garden City*, 38 Fed. 860 ; the *Titan*, 44 Fed. 510, affirmed 49 Fed. 479, 1 C. C. A. 324 ; the *Clara*, 49 Fed. 768. But the argument of counsel having been directed more particularly to the

rules provided in the Act of Congress, of March 3d, 1885, prescribing "Revised International Rules and Regulations for Preventing Collisions at Sea," we will proceed to consider the movements of the vessels with respect to these rules. Article 16 of these rules provides as follows :

"If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on the starboard side shall keep out of the way of the other."

Article 18 provides :

"Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or stop and reverse, if necessary."

Article 19 provides :

"In taking any course authorized or required by these regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, namely: One short blast to mean, 'I am directing my course to starboard;' two short blasts to mean, 'I am directing my course to port;' three short blasts to mean, 'I am going full speed astern.' The use of these signals is optional, but if they are used the course of the ship must be in accordance with the signal made."

Article 21 provides :

"In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship."

Article 22 provides :

"Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course."

Article 23 provides:

“In obeying and construing these rules, due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.”

When the *Oceanic* discovered the *City of Chester* coming out of the harbor, the former had the latter on the starboard bow, and, under Article 16, the *Oceanic* was bound to adopt such a course as would enable her to keep out of the way of the *City of Chester*, while the latter was entitled to keep her course. The *Oceanic* had ample opportunity to “keep out of the way” of the approaching *City of Chester*, had she acted in due season. There were no impediments to any maneuver she might have seen fit to make, if these had been carried out at the proper time. The testimony shows that the whistles—the fog blasts—of the *City of Chester*, when first heard, indicated that she was some three points off the starboard bow of the *Oceanic*. As the vessels approached, the repeated fog blasts from the *City of Chester* confirmed that vessel’s position and bearing with respect to that of the *Oceanic*, and, furthermore, indicated that the *City of Chester* seemed to maintain about the same course and continued to head in the direction of a point amidships of the *Oceanic*. Such is the testimony of the pilot, captain and officers of the *Oceanic*; and it is an undisputed fact that when the *City of Chester* was first sighted, her position with relation to the *Oceanic* was exactly what these witnesses, guided solely by the sound of the fog blasts of the *City of Chester*, had determined it to be, viz.: Two

and one-half to three points off the Oceanic's starboard bow, heading for amidships. The signals were first heard off Point Bonita, perhaps shortly after that point had been passed. They continued to be heard, increasing in distinctness as the vessels approached each other. These fog signals from the City of Chester were timely notice to the Oceanic to be on guard against the danger of a collision. The situation certainly called for the utmost caution; and while it may be said that the Oceanic, proceeding "dead slow," was not required under the circumstances, to do anything more until the City of Chester should come in view, and her course ascertained, nevertheless the Oceanic should have been prepared by these warnings for immediate action as soon as the dangerous proximity of the City of Chester had been discovered. But was the Oceanic proceeding dead slow? Pilot Meyer says they were abeam of Point Bonita at 9:19, when the order to go dead slow was given. Eight minutes later, he says, they were a quarter of a mile off Point Diablo. These two points are about $1\frac{1}{2}$ miles apart. To traverse this distance in eight minutes requires a speed of more than 10 knots an hour, and yet the pilot tells us that, in going dead slow, he was making 3 to 4 knots through the water without regard to the effect of the tide, and that the tide was running 2 or 3 knots. The greatest possible speed, he admits, is therefore not more than seven knots over the ground. That the Oceanic was proceeding at a higher rate of speed than this is confirmed by the testimony of Allen, the chief engineer of the Oceanic. He says that at 9:14 they were going dead slow, and 11 minutes later they went full speed astern. Captain

Metcalf testifies that when the City of Chester was sighted by the Oceanic the latter vessel was about a quarter of a mile from Lime Point, probably then to the southwest of that point; but, from other testimony, it appears it was not until the vessel was directly off Lime Point that the order was given to go full speed astern. The distance between Point Bonita and Lime Point is more than two miles. To traverse this distance in 11 minutes would require a speed of more than 13 knots an hour. But allowing for possible errors in bearings, and reducing the distance to two miles from Point Bonita to the place where the order was given to go full speed astern, and we still have a speed of more than $10\frac{1}{4}$ knots per hour. Had this vessel been going over the ground at the rate of seven knots per hour—her highest possible speed at that time, according to the pilot—she would have required 12 minutes to pass from a point directly abeam of Point Bonita to a point directly abeam of Point Diablo, and more than 17 minutes to pass from Point Bonita to the place where the order was given to go full speed astern. It is plain, therefore, that either the Oceanic was going at a higher rate of speed than has been admitted by her officers, or the interval of time between the orders to go dead slow and to reverse was greater than that stated by the witnesses. The Oceanic was, in my opinion, proceeding along the mid-channel, aided by its strong current. That she was going at a higher rate of speed than dead slow is established by the fact that, although she reversed a few minutes before the collision, she drove her bow into the City of Chester some 10 feet, or about one-half the latter's beam. That this force was not all the effect of the flood

tide is proven by the fact that both vessels were practically in the same current, and the City of Chester was also acting under an order of reverse.

Article 13 of the Act of March 3, 1885, providing "Revised International Rules and Regulations for Preventing Collisions at Sea," is as follows: "Every ship, whether a sailing ship or a steamship, shall in a fog, mist or falling snow go at a moderate speed." In the case of the *Normandie*, 43 Fed. 156, Judge Brown, of the Southern District of New York, says that—

"What is 'moderate speed' is largely a question of circumstances, having reference to the density of the fog; the place of navigation; the probable presence of other vessels likely to be met; the state of the weather, as affecting the ability to hear the fog signals of other vessels at a reasonable distance; the full speed of the ship herself; her appliances for rapid maneuvering, and the amount of steam power kept in reserve, as affecting her ability to stop quickly after hearing fog signals."

A great many cases have been before the Courts, involving the question of what is a moderate speed in a fog; but it will not be necessary to review these cases, since for the present purpose the rule applicable to the situation under consideration may be briefly stated in the words of Judge Wallace in the case of *Fabre vs. Steamship Co.* (decided in the Circuit Court of Appeals for the Second Circuit), 3 C. C. A. 534, 53 Fed. 290. He says:

"Prudent seamanship requires a steam vessel navigating in a fog, hearing apparently forward of her beam the fog signal of another vessel, the position of which is not ascertained, if the circumstances of the case admit, to

“stop her engines and then navigate with caution until danger of collision is over.”

This rule, as Judge Wallace states, had been incorporated into the “Regulations for Preventing Collisions at Sea,” adopted by the International Marine Conference of 1889, where it appears as Article 16; but is found there because nautical experience had determined that it was necessary to observe such a rule, and the Courts have often declared it obligatory. In the case of the *City of New York*, 147 U. S. 81, 13 Sup. Ct. 211, the Supreme Court said :

“There is no such certainty of the exact position of a horn blown in a fog as will justify a steamer in speculating upon the probability of avoiding it by a change of the helm, without taking the additional precaution of stopping until its location is definitely ascertained.”

Applying this rule to the present case, we find that the *Oceanic*, being warned by fog signals apparently forward of her beam that another vessel was approaching through the channel, instead of keeping on in the direction of danger, should have stopped her engines and then navigated with caution until the danger of collision was over. The claim that is made that she reduced her speed to dead slow off Point Bonita, when the fog signals were first heard, did not meet the requirement of the situation, even if her speed was only at the rate of 7 knots per hour; but if we conclude that she was steaming and drifting in the tide at the rate of 10 knots per hour, then, clearly, she was proceeding in gross violation of the rule, and must be held responsible for the consequences.

The question now is, was the *Oceanic*, having an un-

known vessel on her starboard side, required to act on the fog signals of the latter and keep out of her way, as provided in Article 16 of the Rules and Regulations of 1885, or was the Oceanic at liberty to go on until the approaching vessel should come in view, and then regulate her conduct in accordance with the situation as it should then appear? Would the mere fact that the fog prevented the officers of the Oceanic from getting sight of the City of Chester sooner excuse or relieve them from acting upon the signal of danger which her fog blasts indicated? To admit that they were justified in pursuing such a course, would, in my judgment, avoid this important rule of navigation and remove one of the most effective safeguards against collision in foggy weather. This examination into the conduct of the Oceanic with respect to the fog signals of the City of Chester has not been made, however, for the purpose of determining whether she was at fault during this stage of her progress. It has been rather for the purpose of better understanding her later movements, which are the subject of controversy.

We come now to consider the conduct of the Oceanic after the City of Chester came in view. The latter vessel was discovered looming up through the fog about a half a mile distant on the starboard bow of the Oceanic, precisely as the fog signals had previously indicated. It was certainly then the duty of the Oceanic to adopt prompt measures to keep out of the way of the City of Chester. The *Aurania*, 29 Fed. 124; the *Ogemaw*, 32 Fed. 922. What did she do? She signalled to the City of Chester, with two blasts of the whistle, that she would direct her course to port, and for the City of Chester to do the same,

and accordingly the helm of the Oceanic was put hard astarboard. The City of Chester responded to the signal of the Oceanic with two blasts of her whistle, indicating that she would direct her course to port—that is to say, she would pass on the starboard side of the Oceanic. It was, however, soon discovered that the City of Chester was not carrying out the agreement, but, on the contrary, was acting as though under the influence of a port helm and was directing her course to starboard. Two minutes after the first signal, the Oceanic gave the second signal of two blasts, adhering to her previous determination to direct her course to port, and indicating that the City of Chester should do the same. The City of Chester answered as before, but kept on the contrary course. Almost immediately after, the order was given on the Oceanic to go full speed astern; but this order came too late, for in two minutes the vessels were in collision.

Counsel for respondent claim that the rule which requires that a vessel which has another on her starboard side shall keep out of the way of the other does not apply in this case because the steamers, as it is claimed, were not on crossing courses. The contention is based upon the ground that if the line of the course of the Oceanic had been produced, when the vessel first caught sight of the City of Chester, it would never have touched the City of Chester; while, if the line of the course of the City of Chester had been produced, it would have crossed the Oceanic somewhere about the funnel or bridge. These, they claim, do not constitute crossing courses. It is admitted that the vessels were not end on to each other, and they were not on parallel courses, but they were approach-

ing each other from opposite directions, obliquely. The City of Chester was so headed, and both vessels were so advancing and approaching each other, that, unless they changed their courses radically, the bow of the City of Chester would eventually strike the Oceanic amidships. This is the very thing which the rule was designed to prevent. If this was not a crossing course by one vessel, involving a risk of collision, it is difficult to understand how the course could be designated, or what rule of navigation could apply. If their contention be true, then, as the vessels were confessedly not end on, nor on crossing courses, none of the rules would be applicable. But I think there can be no question that the vessels were on crossing courses within the meaning of Article 16. The language used is very broad, and apparently refers to any crossing of courses involving risk of collision. The very fact that it does not specify any particular course or courses indicates, to my mind, the general character of the rule. One vessel may be crossing the path of another, or both may be approaching on converging lines so as to meet at a given point, or, as in the case at bar, one may so bear upon another that, eventually, if no change is made in the course of one or both, a collision is rendered imminent. In any of the above instances the risk of collision, all things being equal, is as great in the one case as in the other. The vessels, in my opinion, were on crossing courses, within the meaning of the rule; and the Oceanic, having the City of Chester on her starboard bow, and being apprised of that fact, or chargeable with notice of that fact, from the direction of the repeated fog signals, for some 10 or 12 minutes before the collision, should have

kept out of the way, and should have taken steps to do so much sooner than she did. The *Lepanto*, 1 C. C. A. 503, 50 Fed. 234; the *Georgia*, 1 C. C. A., 489, 50 Fed. 129.

We have now reached the important question in the case: Was the *Oceanic* at fault in failing to reverse sooner than she did? The testimony indicates that when the first signal was given, and answered by the the *City of Chester*, the helm of the *Oceanic* was put hard a starboard. There is, however, a discrepancy in the testimony of Pilot Meyer on this point. He first says that the helm was put hard a starboard at this time, and again his statement would seem to indicate that the helm was not put hard a starboard until the second signal was given, but the captain and officers agree that the helm was placed hard a starboard immediately after the first signal. This order, it will be remembered, was given as soon as the *City of Chester* had been discovered through the fog. The distance at which the *City of Chester* was first seen was about half a mile. Although this vessel answered the two whistles of the *Oceanic* with two, thus agreeing to go to port, yet she did not, at any time before the collision, act in accordance with her signal. All the witnesses on the *Oceanic* agree that the *City of Chester* failed absolutely to comply with her promise. Upon answering the first signal, she seemed to respond to her starboard helm just a trifle; but this was only momentary, for she seemed to be under the influence of a port helm,—going to the right instead of to the left. Her course to the right was not a sudden or radical change from the left to right, but it was a steady and gradual change, becoming more apparent all the time, until, when under full speed astern, with her

helm hard a starboard, she went to starboard so rapidly that she got across the bows of the Oceanic, that vessel running into her on her port side some 20 feet abaft the bow. But at no time, the witnesses of the Oceanic all swear, did the City of Chester appreciably answer her starboard helm, by going to the left, as she had agreed to do. This fact was observed by the pilot, captain, and officers; and yet no steps were taken by either the pilot or the captain to ascertain whether the signal had been misunderstood, or incorrectly answered. Fully two minutes were allowed to pass by, the vessels meanwhile continuing to approach each other, when the pilot, becoming alarmed at the aspect affairs were assuming, ordered two whistles,—to go to port,—which the City of Chester answered also with two. About half a minute or thereabouts expired after this second signal had been given and answered, when, for the first time, the order to reverse was given by the captain of the Oceanic. It appears that it was about this time that the City of Chester first obtained a view of the Oceanic; and her captain, seeing that a collision was absolutely unavoidable, also gave the order of full speed astern. Both sides agree—that is, the witnesses on the Oceanic and the City of Chester concur—that, when the order to reverse was given by each, the collision was inevitable. It is plain that this order came too late to be of any utility, even to materially mitigate the disastrous effects of the collision, for the City of Chester was penetrated by the Oceanic fully 10 feet, or about half her beam, and could only be kept afloat by keeping the Oceanic impinged in the breach, and even then she was kept afloat for only five or six minutes. In this the

Oceanic was clearly at fault. She should have gone full speed astern much sooner, particularly in view of the warning conveyed to her in the fog-signals of the City of Chester. In my judgment the Oceanic should have been reversed the instant it was discovered that the City of Chester did not respond to her helm as she had agreed to. The situation was a critical one at that time, and called for immediate action, as further developments conclusively showed. It was absolutely necessary to reverse then to avoid, not a mere risk of collision, but a collision itself. The risk of collision, to my mind, existed for some time prior. It was certainly present when they first sighted the City of Chester. The very object of the maneuver which the pilot of the Oceanic elected to adopt, and acceded to by the City of Chester, was made with the view of avoiding a collision.

The pilot says: "I said: 'Now it is time to give him two distinct whistles, to tell him we will starboard; he is now on our starboard bow; he is going this way—that he may put his wheel starboard and clear us.'"

The testimony of this witness as to when the danger of collision arose is significant:

"Q. Do you mean to tell us that there was but one thing that would have saved the ship from colliding with you after you first saw her, and that was that she should go to starboard—that she should obey her starboard helm? A. Certainly. Q. That is the only thing that would prevent a collision from the time you first saw her? A. Yes, sir. Q. Then from the time you first caught sight of the Chester you felt that there would be a collision unless she went to port? A. Yes, sir. Q. Un-

“ less she obeyed her starboard helm? A. Yes, sir. Q. Is
 “ that right? A. Yes, sir. Q. If that is the condition
 “ of affairs, why did you sound the second signal?
 “ A. Because she did not go that way. Q. You sounded
 “ the second signal to get her to go that way? A. Yes,
 “ sir.”

Again :

“ Q. As I understand, you say when you saw the City of
 “ Chester a half a mile away, and some three points on
 “ her starboard bow, that nothing could avert the collision
 “ or disaster except her turning to starboard? A. That
 “ is what it is.”

This testimony is substantiated by that of Captain Metcalfe and the other officers of the Oceanic.

Now, if it was necessary when the City of Chester came into view for both vessels to act in order to clear each other, it is too plain to need comment that there was a serious risk of collision. That being true, the instant that the officers of the Oceanic saw that the City of Chester did not do as she ought to have done, with all the means at their command, their skill and experience, and in view of the significant symptoms of danger already adverted to, they should certainly have stopped and reversed. The language of Judge Simonton in delivering the opinion of the Circuit Court of Appeals for the Fourth Circuit, in the case of *The Louise*, 3 C. C. A., 330, 52 Fed. 885, is applicable to the case at bar. He says.

“ These (the rules of navigation) leave but little room
 “ for mere conjecture in controlling the action of the master
 “ and pilot. Each of them has in his power the means of
 “ ascertaining with approximate certainty the intention

“ and course of an approaching steamer. He must use
“ them. Notwithstanding this, errors committed by one
“ of two vessels approaching each other from opposite di-
“ rections do not excuse the other from adopting every
“ proper precaution required by the special circumstances
“ of the case to prevent a collision. Rule 24; *The Maria*
“ *Martin*, 12 Wall. 47; *The Scotia*, 14 Wall. 181. If
“ there be any uncertainty as to the intentions of the ap-
“ proaching vessel. This of itself calls for the closest
“ watch and the highest degree of diligence on
“ the part of the other vessel, with reference to her
“ movements, and it behooves those in charge to be prompt
“ in availing themselves of every resource to avoid not
“ only a collision, but the risk of such a catastrophe. *The*
“ *Manitoba*, 122 U. S. 108, 7 Sup. Ct. 1158.”

In *the America*, 92 U. S., 432, Mr. Justice Clifford, speaking for the Supreme Court, said :

“Sailing rules were ordained to prevent collisions be-
“ tween ships employed in navigation, and to preserve life
“ and property embarked in that perilous pursuit, and not
“ to enable those whose duty it is to adopt, if possible, the
“ necessary precautions to avoid such a disaster, to deter-
“ mine how little they can do in that direction without be-
“ coming responsible for its consequences in case it occurs.”

Again :

“ Rules of navigation are ordained to preserve life and
“ property and not to promote or authorize collision. Even
“ flagrant fault committed by one of two vessels approach-
“ ing each other from opposite directions will not excuse
“ the other from adopting every precaution to prevent a
“ collision. *The Maria Martin*, 12 Wall. 47.”

The case of the *Khedive* (decided by the House of Lords in 1880), 5 App. Cas. 876, is in point. The facts of that case were not as strong against the vessel failing to reverse in a seasonable time as in the case at Bar. There the collision had been precipitated by another vessel—the *Voorwaarts*—suddenly altering her course. The master of the *Khedive*, thus taken unawares, gave the order to place the helm hard a starboard and for the engineers to stand by the engines ready for any emergency. About a minute and a half later he gave the order, “Full speed astern.” But after an elaborate consideration of the case the House of Lords held that he gave the order to reverse too late; that he should have done so when he directed the engineers to stand by their engines; that the rule of navigation, that “every steamship, when approaching an other ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse”—which is the same as our rule (Article 18 of the Act of March 3, 1885)—gave the master no discretion when risk of collision was present; that he was bound to stop and reverse at the first moment of danger; and that, as he had not done so, the *Khedive* was in part to blame. Lord Blackburn observes:

“We are advised, and of the opinion, that under the
 “circumstances and in the position of those two ships, it
 “was quite right that the helm of the *Khedive* should be
 “put hard a starboard. But then comes the question
 “whether the captain ought not, at the time he gave the
 “order to put the helm hard a starboard, to have ordered
 “the engines to be stopped and reversed. It was obvious
 “that at that moment there were two steamships approach-
 “ing each other in great danger of collision. It is obvi-

“ous, therefore, that the rule of navigation applied, unless
 “there were something which made it necessary for the
 “safety of the navigation that the rule as to stopping and
 “reversing should not be acted upon.”

Speaking of the conduct of the master of the Khedive, he says:

“He at once took in the situation and was aware that
 “there was risk of collision and that it was imminent if
 “not inevitable; and he acted with great promptitude and
 “skill, so as greatly to alleviate the violence of the inevi-
 “table condition. But he did not stop and reverse, nor
 “even slacken his speed; and there he departed from the
 “course prescribed by Regulation 16. Nor was there any-
 “thing in the circumstances rendering a departure
 “from this rule necessary in order to avoid immediate
 “danger. Even if it would, in the absence of such a
 “positive rule, be better seamanship to keep way on the
 “ship in order to make her more manageable (which is
 “not clear), the Legislature has thought it better to pre-
 “scribe the course which must be followed.”

In the case at bar fully two and a half minutes at least were allowed to pass by after the dangerous proximity of the City of Chester had been discovered before the order to reverse was given, and the risk of collision cannot be said to have been an imminent one. It was a foregone conclusion. The order to reverse was delayed in the face of the fact that during all this time it was seen that the City of Chester was not answering her helm and was not going to port; but, on the contrary, was going to star-board. The City of Chester was not, in fact, executing the maneuver relied on to avoid a collision. This was ob-

served from the first. The pilot and Captain of the Oceanic should therefore have appreciated the imminent risk of collision the instant they saw that the City of Chester did not respond to her helm, and should have acted promptly. They neither stopped nor did they reverse. They now seek to justify their tardy action upon the ground that as the master of the City of Chester signalled that he would go to port, they were justified in relying upon that signal, and this in the face of, and with positive and convincing evidence of, facts which showed that the City of Chester was not doing as she had agreed to do, but was doing just the opposite. If they did not observe these facts they should have done so, and their failure to do so cannot be excused.

In the case of the Peryl (decided by the Court of Appeals), 9 Prob. Div. 137 (1884), Breet, M. R., held that although the Beryl had the right of way, and had slackened her speed from a quarter to a half a mile distant from the Abeona, and had stopped and reversed some 200 yards distant, she was still in fault for failing to reverse soon enough, and she was held mutually liable with the Abeona. The learned Judge observed:

“ I am sorry in this case to have come to the conclusion
 “ to which I feel bound to come. I take it that the basis
 “ of the regulations for preventing collisions at sea is that
 “ they are instructions to those in charge of ships as to
 “ their conduct, and the Legislature has not thought it
 “ enough to say, ‘ We will give you rules which shall pre-
 “ vent a collision.’ They have gone further and said that,
 “ ‘ For the safety of navigation we will give you rules
 “ which shall prevent risk of collision. It is not enough

“ if you do only that which will apparently prevent a col-
 “ lision. We will give you rules which shall regulate
 “ your conduct, not merely for the purpose of
 “ preventing even a risk of collision ’ * * * *
 “ Another rule of interpretation of these regulations
 “ is (the object of them being to avoid risk of col-
 “ lision), that they are all applicable at a time when
 “ the risk of collision can be avoided—not that they
 “ are applicable when the risk of collision is already fixed
 “ and determined. We have always said that the right
 “ moment of time to be considered is that which exists at
 “ the moment before the risk of collision is constituted.
 “ The words are not, ‘ If two ships under steam are cross-
 “ ing with a risk of collision,’ but ‘ are crossing so as to
 “ involve risk of collision ;’ that is, the moment before
 “ there was a risk of collision.”

And again he observes :

“ That rule (to slacken speed, or to stop and reverse, in
 “ my opinion, like all others, applies particularly to the
 “ moment the risk of collision is constituted and exists.
 “ It is at a time when the action of both steamers is such
 “ as to involve risk of collision. At that moment of time,
 “ if what they are doing involves a risk of collision, they
 “ are both to slacken their speed. It applies to each of
 “ them. But it may be that the condition of things just
 “ before the moment when the risk of collision is to be
 “ constituted is such that slackening will not avoid that
 “ risk of collision, and that it requires another maneuver,
 “ namely, that of stoping and reversing, and then they
 “ must stop and reverse, either one or the other, or both.
 “ That again, is an instruction as to the conduct of men,

“ and it cannot be that they are to do that thing merely
 “ because it is proved afterwards that there was a risk of
 “ collision, or if there was risk of collision about to be
 “ constituted. It must apply if the circumstances are such
 “ that an officer of ordinary skill and care would be
 “ bound to come to the conclusion that if the ships
 “ continue to approach each other there will be risk of
 “ collision.”

The case of *Fabre v. Steamship Co.*, *Supra*, involved the question of responsibility for a collision between the steamship *Umbria* and *Iberia* near the entrance to New York harbor. The District Court held that the *Umbria* alone was in fault. The Circuit Court of Appeals found that both vessels were to blame, and in commenting on the conduct of the *Iberia*, said:

“ During the interval of probably eight minutes, the
 “ whistles of the *Umbria* apparently continued to bear
 “ steadily at about the same place, on the *Iberia*'s port
 “ hand. This should have made it clear to the master of
 “ the *Iberia* that the vessels were approaching, so as to in-
 “ volve the risk of collision. Under such circumstances,
 “ it was his imperative duty to stop his vessel until he
 “ could come to a clear understanding of the course of
 “ the *Umbria*. The event proved that she would have
 “ escaped if her engines had not been put at full speed;
 “ but it could not be foretold that she could do so, and the
 “ only proper course was to observe the rule which
 “ requires steam vessels, when approaching one another,
 “ so as to involve risk of collision, to slacken speed, or if
 “ necessary, stop and reverse. It is the imperative rule,
 “ when two steamers are approaching each other in a fog,

“ and the signals of each of them indicate that they are
“ drawing together on opposite or crossing courses, for
“ each to stop until a clear understanding is reached with
“ regard to their respective positions and courses ; and, if
“ there be any confusion of signals, or any other apparent
“ risk of collision, not only to stop, but to reverse their
“ engines.”

The Court cites a number of cases in support of the doctrine; among others, that of the *Beryl*, *supra*. There are also many other cases to the same effect; and, while it may appear that the situations in these several cases differ in some particulars from the one at bar, nevertheless the rule of safety, as declared by the Courts, is applicable here, and determines that the *Oceanic*, under the circumstances of her situation, was at fault in not stopping and reversing her engines to prevent the collision. In this connection, the conduct of the captain and pilot with respect to the probable effect of the tidal current upon the *City of Chester* should not be overlooked. They both admit that they did not take into consideration the probable effect which the tide rip or cross-current, which they knew the *City of Chester* had to cross, would have on her starboard helm. They claim that this was a matter solely for the captain of the *City of Chester* to have taken into consideration when he assented to their signal to go to port. They claim, further, that they did not know as a matter of fact the position of the *City of Chester* with respect to the tide rip; but they admit that they knew where the tide rip was, and they admit that they knew the position of the *City of Chester*, for they had sight of her when she was a half a mile off—so they claim—and kept

her in view continuously up to the collision. Putting all this information together, it would not have been such a difficult task to determine, approximately, of course, the fact whether or not the City of Chester had not crossed the tide rip. But they confess they did not give "the matter of the Chester being caught in that tide any consideration whatever." And yet the captain admits that a vessel going from slack water into a cross current would be carried off her course to some extent, and that such was the effect of this rip tide upon vessels crossing it going out of the harbor; and he also states it as his opinion that when he first caught sight of the City of Chester she had not yet crossed that rip. He says:

"Assuming the position of the City of Chester to be half a mile from me on my starboard bow when the first signal was given, she was not within the influence of that tide rip in the neighborhood of Fort Point."

He therefore knew or should have known that the City of Chester had to cross that current, and yet he confesses that he gave the matter no consideration whatever; in other words he ignored this factor completely, and the order to go to port was given by the pilot, and insisted on, regardless of the probable effect of the flood tide on the helm of the City of Chester.

In the case of *The John II. May*, 52 Fed. 882, Judge Butler said: "He (the captain) says that he was unaware of the state of the tide, which tended to carry the barge upward. This was inexcusable ignorance for which, also, his vessel must answer." In the case of *The Ogemaw*, 32 Fed. 919, the same doctrine is affirmed: "A steamer bound to keep out of the way must, at her own

“peril, shape her course for a safe margin against the contingencies of navigation and the effect of tide currents.”

In view of these established rules of navigation, the conclusion is reached that the *Oceanic* was at fault in her movements, and, failing to use ordinary care in attempting to pass the City of Chester, she is mutually responsible with the City of Chester for the damages resulting from the collision.

As to the amount of damages: The deceased, Henry Smith was thirty-two years of age and in first-class health. He had been married for some five years and a half, and was the father of three children, one of whom, Myrta Smith, also lost her life in the disaster. He had been engaged, just previous to his death, in the dairy business in Sacramento, Cal. His widow testifies that he owned some property in connection with the dairy business, 160 acres of land, about 45 cows, 10 or 15 head of horses and mules; that he supported himself and family, including his father and sister-in-law; that the family expenses were from \$75 to \$100 per month, and that he made from \$50 to \$75 over that sum a month. His yearly earnings would, therefore, at that rate amount to from \$1,500 to \$2,100. He had \$500 on his person when drowned, which was missing when his body was found. Testimony was introduced to show, that to purchase an annuity of \$1,500 on a male person thirty-two years of age and in good health, would require \$24,882 in cash. There are, however, considerations involved in determining the value of a life not embraced within the rules of the annuity tables. *Morgan vs. Southern Pac. Co.*, 95 Cal. 521, 30 Pac. 601; *Cheatam vs.*

Red River Line, 56 Fed. 248; In re Humboldt Lumber Manufacturers' Ass'n, 60 Fed. 428. In fourteen States these considerations have found expression in statutes limiting the amount that may be recovered for the death of a person to \$5,000, and in two States and one Territory the law limits the amount to \$10,000. There is no limitation in this State. Section 377 of the Code of Civil Procedure provides that "such damages may be given as under all the circumstances of the case may be just." The statutes of those States which fix a limit have been noticed by the Courts in other States, and have had weight in fixing the amount of damages. In view of all the circumstances of this case, I will assess the damages caused by the death of Henry Smith at \$10,000.

Myrta Smith was over four and a half years of age and in good health. The Supreme Court of this State, in *Morgan vs. Southern Pac. Co.*, 95 Cal. 510, 30 Pac. 603, held that in an action by a parent to recover damages for the death of a minor child, caused by negligence, the main element of damage is the probable value of the services of the deceased during minority. Manifestly there is no rule that will enable the Court to estimate with any degree of accuracy, the probable value of the services of a child. But as the statute gives the right of action for the benefit of the parent without regard to circumstances, I must determine that there is some injury, which I fix in the sum of \$1,000.

At a stated term of the District Court of the United States, for the Northern District of California, held at the Court room, in the City of San Francisco, on Monday, the 23rd day of April, in the year of our Lord, one thousand eight hundred and ninety-four.

Present:

The Honorable W. W. MORROW, Judge.

HENRY F. SMITH ET AL,

VS.

OCCIDENTAL & ORIENTAL S. S. Co.

} No. 10,732.

On motion of W. H. Cobb, Esq., Proctor for the libelants, a decree in favor of libelants for ten thousand dollars (\$10,000) and costs was this day signed and entered.

*In the District Court of the United States in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH AND GEORGE C.
SMITH, Infants, by Eliza A.
Smith, for herself and as Ad-
ministratrix of the estate of
Henry Smith, deceased.

Libelants,

vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY (a cor-
poration) and THE PACIFIC
COAST STEAMSHIP COMPANY (a
corporation),

Respondents.

FINAL DECREE.

This cause heretofore came on regularly to be heard by the Court upon the libelants' libel and the answer thereto of the respondent, the Occidental and Oriental Steamship Company, a corporation (the respondent, the Pacific Coast Steamship Company, having by reason of proceedings taken by it pursuant to Sections 4,282 and 4,289 of the Revised Statutes of the United States been dismissed herein), and upon the proofs submitted by the respective parties, and proctors for both parties having been heard thereon, and the cause having been tried on its merits and submitted to the Court for its determination, and the

Court having delivered and filed its decision in writing in the case, wherein and whereby it finds the allegations of the libel herein to be true, except that the Court finds the libelants have been damaged by said respondent, the Occidental and Oriental Steamship Company, in the sum of ten thousand dollars (\$10,000) only, instead of the sum stated in the libel, and the Court having ordered the final decree to be made and entered herein in favor of libelants and against the said respondent, the Occidental and Oriental Steamship Company, for the sum of ten thousand dollars (\$10,000).

Therefore, by reason of the premises, it is ordered, adjudged and decreed that the said libelants, Henry F. Smith, George C. Smith and Eliza A. Smith, for herself, and also as administratrix of the estate of Henry Smith, deceased, do have and recover of and from the respondent, the Occidental and Oriental Steamship Company (a corporation), the sum of ten thousand dollars (\$10,000), with legal interest thereon from the date hereof, together with libelants' costs of suit herein taxed at

It is further ordered, adjudged and decreed herein that the said sums may be paid to the proctors of libelants, and that said proctors may enter complete satisfaction of this decree upon payment to them of the said sums hereinbefore specified.

It is further ordered, adjudged and decreed herein, that unless this decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this Court, that the libelants have execution against respondent, the Occidental and Oriental Steamship Company (a corporation), to enforce

satisfaction of this decree, or so much thereof as shall remain unsettled.

Done in open Court at the stated term, etc., this 23d day of April, A. D. 1894.

WM. M. MORROW,
District Judge.

[Filed]: April 23d, 1894.

SOUTHARD HOFFMAN, Clerk.
By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, Northern
District of California.
In Admiralty.*

HENRY F. SMITH, ET AL.,	}
Libelants.	
vs.	
THE OCCIDENTAL AND ORIENTAL	}
STEAMSHIP Co., ET. AL.,	
Respondents.	

BILL OF COSTS OF LIBELANTS.

Proctor docker fee.....	\$ 20.00
Deposition of Sarah Nye.....	7.80
Affidavit of taking deposition.....	.50
Certified copy of Letters of Administration.....	1.50
Clement Bennett, Court room reporter.....	117.00
Cash paid U. S. Marshal	25.00
Cash paid witnesses.....	70.60

\$242.40

STATE OF CALIFORNIA, }
 City and County of San Francisco. } ss.

W. H. Cobb being duly sworn deposes and says, that he is one of the Proctors for libelants in the above action, and was as such is better informed as to the items charged in the foregoing memorandum than said libelants; that to the best of his knowledge and belief the foregoing items of costs and disbursements in this action are correct, and that the said disbursements have been necessarily incurred in said action.

Subscribed and sworn to before me this 24th day of April, 1894.

W. H. COBB.

[SEAL.]

L. M. HOEFLER,
 Court Commissioner of the City and
 County of San Francisco.

Libelants Proctor's costs taxed at \$242.40, the payment of \$20 to Clerk being stricken out.

SOUTHARD HOFFMAN, Clerk.

May 1st., 1894.

In the District Court of the United States Northern District of California.

HENRY F. SMITH, ET. AL., <div style="text-align: center;">vs.</div> OCCIDENTAL & ORIENTAL STEAMSHIP Co., ET. AL.,	}	Libelants, Respondents.
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STATE OF CALIFORNIA,
 City and County of San Francisco. } ss.

W. H. Cobb being duly sworn deposes and says: that he is one of the Proctors for libelant in the above entitled action, and paid out the money for witness fees on the trial of said cause. That there was actually paid to the following named witnesses the several amounts of money set opposite their respective names, but such receipts as were taken therefore are mislaid and lost.

J. J. Loggie,	1 days attendance.....		\$1.50
Frank Cookson,	3 " "		4.50
John Lundum,	5 " "		7.50
Jos. Rankin,	5 " "	and 20 mi. travel..	8.50
F. Westdahl,	1 " "		1.50
Louis Meyer,	1 " "		1.50
John Metcalfe,	1 " "		1.50
Rufus Comstock,	4 " "		6.00
Clitus Barbour,	1 " "		1.50
Chas. McCullom,	1 " "		1.50

W. H. COBB.

Subscribed and sworn to before me this 24th day of April, 1894.

[SEAL.]

L. M. HOEFLER,

Court Commissioner of the City and County
 of San Francisco, State of California.

In the District Court of the United States, Northern District of California.

HENRY F. SMITH, ET AL.,

vs.

THE OCCIDENTAL & ORIENTAL
STEAMSHIP COMPANY, a corporation.

STATE OF CALIFORNIA,

County of Sacramento.

Clinton L. White, being duly sworn, says that he is one of the Proctors of libelants in the above-entitled cause; that, in addition to the items of costs in said cause necessarily paid out by libelant for which receipts are furnished, he, on behalf of libelants, also paid out the following items, all which were necessarily incurred in said cause:

Oct. 17th, 1892...	To Lincoln White, notary public, for affidavit for taking deposition	\$0.50
Oct. 29th, 1892...	To Win J. Davis, notary public, for taking deposition of Witness Sarah Nye	7.80
Aug. 26th, 1893...	To Clerk of Yolo County, for certified copy of letters of administration, required as evidence.....	1.50
Sept. 15th, 1893...	To Bennett, Court reporter ...	117.00
		<u>\$126.80</u>

That other items of costs were paid by W. H. Cobb, on behalf of libelants, which affiant does not attempt to state in the above list.

CLINTON L. WHITE,

Subscribed and sworn to before me this 23rd day of April, 1894.

[SEAL.]

CHAS. T. HUGHES,
Notary Public, in and for the County of
Sacramento, State of California.

*In the United States District Court, Northern District of
California.*

HENRY F. SMITH, ET AL.,
v.
THE OCCIDENTAL & ORIENTAL
STEAMSHIP Co.

Received of libelants in the above entitled cause the sum of \$10.20, being for one day's attendance as a witness, and mileage from Sacramento to San Francisco and return, 87 miles each way, on the trial of said action.

JACOB NOE.

*United States Marshal's Office, Northern District of Cali-
fornia. In the United States District Court.*

SMITH, ET AL.,
vs.
O & O. S. S. Co.

SAN FRANCISCO, Aug. 21, 1893.

Received of M. G. Cobb, Plff's Counsel, twenty-five dollars, on account of costs and disbursements in the above-entitled suit.

W. G. LONG, Marshal.
By A. I. FARISH, Deputy Marshal.

*In United States District Court, Northern District of
California.*

HENRY F. SMITH, ET AL.,	}
v.	
THE OCCIDENTAL AND ORIENTAL STEAMSHIP CO.	

Received of libelants in the above entitled cause the sum of \$13.20, being three days' attendance as witness, and mileage from Sacramento to San Francisco and return, 87 miles each way, on the trial of said cause.

MRS. SARAH J. NYE.

*In the District Court of the United States, Northern Dis-
trict of California.*

HENRY F. SMITH, ET AL.,	}
v.	
THE OCCIDENTAL & ORIENTAL STEAMSHIP CO.	

Received of libelants in the above entitled cause the sum of \$10.20, being for one day's attendance as a witness, and mileage from Sacramento to San Francisco and return, 87 miles each way, on the trial of said cause.

GEORGE B. BLUE.

Service of a copy of within admitted this 25th day of April, 1894, at San Francisco.

W. H. L. BARNES,
Proctor for Respondents.

[Endorsed:] Filed April 24th, 1894.

SOUTHARD HOFFMAN, Clerk.

Northern District of California. United States District Court.

HENRY F. SMITH, ET AL., VS. OCCIDENTAL & ORIENTAL S. S. CO ET AL.	}	No. 10,732.
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1892—

Oct. 29th...	Serving Subp. on Thomas Wallace and Jno. Lundey	\$1.00
	Paid witness fees	3.00
31st...	Serving Subp. on Rufus Comstock50
Sept. 4th...	Serving Subp. on 12 witnesses for Plff., Paid witness fees, \$16.00; expenses, \$2.50	6.00 18.50
13th...	Serving Subp. on W. A. Phillips for Plff.....	.50

1894—

Apr. 26th...	Poundage on \$10,000	52.50
		\$82.00
Sept. 14th...	By Cash from Plffs.....	29.50
		\$52.50

[Endorsed:] Filed April 24th, 1894.

SOUTHARD HOFFMAN, Clerk.

District Court of the United States, Northern District of California.

HENRY F. SMITH, <i>et al.</i> , by A. SMITH, &C.	} Nos.
vs.	
OCCIDENTAL AND ORIENTAL S. S. Co.	} 257-10,732
	} in Admiralty.

CLERK'S COSTS.

1890—

Aug. 19...	Filed complaint .20 iss'd summons	\$2.40	\$2 60
	...Iss'd two copies summons.....		4 00
	...Iss'd two certified copies complaint, 18		
	folios		3 60
	...Seal and certificate to copies.....		1 40
21...	Filed summons .20, filed return .20, ent.		
	return 30		70
27...	Filed demurrer of O. & O. S. S. Co...		20
Sept. 1...	Filed order extending time to Pacific		
	S. S. Co. to plead.....		20
Nov. 1...	Filed Ans. of Pacific S. S. Co... ..		20

1891—

Jan. 2...	Filed notice to set demurrer for hearing..		20
	...Filed plffs' brief .20, Jan. 12th hearing		
	on dem.....		50
29...	Order demurrer overruled.....		30
Feb. 18...	Filed ans. .20, filed affd't of service of		
	ans		40

1892—

Feb. 1...	Order trial set for Meh. 15, '92.....		30
Meh. 15...	Order trial cont. for the term.....		30
July 11...	Ent'g case on calender.....		30
	...Order trial set for Oct. 10.....		30
Oct. 10...	Order trial cont. to Nov. 9th.....		30

Oct.	29...	Iss'd supb. .50, and two copies .80, plff..	1	30
	31...	Iss'd supb. .50, and 1 copy 40		90
		...Filed two supbs. on ret. .40, filed rets.		
		· 40, ent. returns .60.....	1	40
Nov.	1...	Iss'd supb. .50, and copy .40, for plff...		90
	9...	Order cause dismissed as to Pacific Coast		
		S. S. Co		30
		...Order trial continued for term.....		30
	28...	Order trial set for Jan. 16.....		30
1893—				
Jan.	16...	Order trial cont. for the term.....		30
Feb.	3...	Iss'd supb. .50, and 14 copies \$5.60, plff	6	10
July	10...	Entering case on calender....		30
Aug.	14...	Order trial set for Sept. 4th.....		30
	19...	Iss'd supb. .50, and 15 copies plff. \$6.00	6	50
	28...	Iss'd supb. .50, and 18 copies for deft.		
		\$7.20	7	70
	30...	Iss'd supb. .50, and 6 copies for deft.		
		\$2.40	2	90
Sept.	4...	Filed supb. on ret. .20, filed ret. .20, ent.		
		ret. .30.....		70
		...Order trial cont. Sept. 7.....		30
		...Filed supbs. 2 on ret. .40, filed rets.		
		.40, ent. rets. .60.....	1	40
		...Filed stip. that this action is one in ad-		
		miralty.....		20
		...Hearing .30, order libs, allowed to amend		
		etc., swearing witnesses libs. .40.....		70
Sept.	8...	Order further hearing cont., etc.....		30
	12...	Further hearing .30, swearing 8 wit-		
		nesses for libs, etc.....	1	90

Sept. 13...	Iss'd supb. .50, and copy for lib. .40...	90
	...Hearing resumed .30, swearing 5 witnesses for lib. \$1.00, and 9 for respondents \$1.80.....	3 10
Sept. 14...	Further hearing .30, argued and sub. filed testy .20.....	50
· 27...	Order proctors for libs. submit brief, etc.	30
1894—		
Jan. 3...	Filed order allowing Barnes withdraw Ex. 1.....	30
Apr. 10...	Order libelants' recover \$10,000 and cost, etc., filed opinion .20.....	50
18...	Made two copies of opinion for respondents 300 folios.....	60 00
23...	Order decree signed and entered.....	30
	...Filed decree .20, entered same \$1.80...	2 00
24...	Filed proctor for libelants' bill of costs..	20
	...Filed marshal's bill of costs.....	20
	...Filed clerk's bill of costs.....	20
	...Made and filed judgment record.....	2 50
	...Docket indices.....	6 00
		—————
		\$127 80

Taxed at \$127.80.

SOUTHARD HOFFMAN, Clerk.

April 24th, 1894.

[Endorsed:] Filed April 24th, 1894.

SOUTHARD HOFFMAN, Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH and GEORGE C.
SMITH Infants, by ELIZA A.
SMITH their Guardian, and
ELIZA A. SMITH for herself and
as Administratrix of the Estate
of HENRY SMITH, deceased,

Libelants.

vs.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY (a corporation)
and PACIFIC COAST STEAMSHIP
COMPANY, (a corporation),

Respondents.

No. 10,732.

And now, by its Proctors, W. H. L. Barnes and Frank Shay, comes the Occidental and Oriental Steamship Company, a corporation, respondent in the above entitled action, and prays this Honorable Court to allow an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the said District Court in said action, made and entered on the 23rd. day of April, 1894; and also that an order be made fixing the amount of security which respondent shall give and furnish upon taking said appeal; and that upon giving said security all further proceedings in this Court be stayed and suspended until the determination of said appeal by

the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray etc.

Dated May 1st., 1894.

W. H. L. BARNES AND
FRANK SHAY,

Proctors for Respondents, the Occidental &
Oriental Steamship Co., a Corporation.

[Endorsed:] Filed May 1st., 1894.

SOUTHARD HOFFMAN, Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH and GEORGE C.
SMITH, Infants, by ELIZA A.
SMITH their Guardian, and
ELIZA A. SMITH for herself, and
as Administratrix of the Estate
of HENRY SMITH, deceased,

Libelants.

vs.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY (a corporation)
AND PACIFIC COAST STEAMSHIP
COMPANY (a corporation),

Respondents.

No. 10,732.

Upon petition, and motion of W. H. L. Barnes and

Frank Slay, Proctors for the Occidental and Oriental Steamship Company, a Corporation, respondent in the above entitled action, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree heretofore and on the 23rd. day of April, 1894, made and entered in said United States District Court be, and the same is hereby allowed; and the bond to be given on said appeal is hereby fixed at the sum of \$20,000, and it is further ordered that upon the giving of said bond all further proceedings in said District Court be stayed until the determination, by the United States Circuit Court of Appeals for the Ninth Circuit, of said appeal.

Dated May, 1st., 1894.

WM. W. MORROW,
Judge of said United States District Court.

[Endorsed:] Filed May 1st., 1894.

SOUTHARD HOFFMAN, Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH and GEORGE C.
SMITH, Infants, by ELIZA A.
SMITH, their Guardian, and
ELIZA A. SMITH, for herself,
and as Administratrix of the
Estate of Henry Smith, De-
ceased,

Libelants,

vs.

THE OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY, a Cor-
poration, and the PACIFIC
COAST STEAMSHIP COMPANY, a
Corporation,

Respondents.

No. 10,732.

The Occidental and Oriental Steamship Company, respondent in the above entitled action, having petitioned said Court for an order permitting it to appeal to the Honorable the United States Circuit Court of Appeals for the Ninth District, from the judgment made and entered in said cause, now makes and files with its said petition the following, and specifies the same as its assignment of errors herein, and upon which it will rely for a reversal of said judgment :

1. That the said District Court of the United States erred in overruling respondent's demurrer to the complaint filed in said action, to which ruling of said District Court of the United States it duly excepted;

2. There was no evidence which proved or which tended to prove any negligence upon the part of defendant, or upon the part of its agents or servants, in the management of the steamship *Oceanic*, before or at the time of the collision with the steamship *City of Chester*;

3. There was no evidence which proved, or which tended to prove that the respondent, through its agents or servants in charge of the *Oceanic* failed to exercise proper care under all of the circumstances to avoid the collision, or that it did anything that it ought not to have done, or neglected to do anything that it should have done;

4. There was no evidence which proved, or which tended to prove that respondent, through its agents on the *Oceanic*, or otherwise, had or ought to have had any knowledge as to the inability of those in charge of the *City of Chester*, to safely navigate her, with due regard to tides and currents, and the ability to handle her in pursuance of the signals interchanged by the *Oceanic* and the *Chester*, which signals required each vessel to starboard her helm and go to port;

5. The evidence proved that the respondent, through its agents, handled the *Oceanic* properly, prudently and carefully in every respect, and observed and exercised all the care which the law imposed upon it under all the circumstances of the case, and that the collision between the *Oceanic* and the *Chester* occurred without any fault on the part of respondent or its agents;

6. The evidence proved that the collision occurred solely by reason of the inability of the persons in charge of the *Chester* to control and manage that vessel, and that when the respondent, through its agents in charge of the

Oceanic, observed that fact and saw that the Chester was not being managed pursuant to the signals interchanged by the two vessels, it promptly, carefully and prudently used all means in its power to avoid a collision;

7. The evidence proved that the respondent, through its agents, navigated the Oceanic in strict accordance with the rules and laws of navigation, before and at the time of the collision, and that it exercised due and proper care to avoid collision ;

8. The evidence proved that the Oceanic arrived off the port of San Francisco, on the morning of August 22d, 1888 ; that the weather was foggy ; that as the steamship entered the harbor its officers and crew were at their proper stations ; that an efficient lookout was kept and proper discipline maintained ; that the proper fog signal was given and had been given by blasts of the steam whistle sounded at intervals of less than a minute for several hours preceding the collision with the Chester ; that for several hours preceding said collision, the speed of the Oceanic had been moderate, ranging from half speed to slow, dead slow and with occasional stops ; that for eleven minutes before the collision, the Oceanic was proceeding "dead slow," with just sufficient movement of her engines to maintain steerage way ; that when near Point Diablo, in the bay of San Francisco, the master and pilot of the Oceanic saw the Chester looming up through the fog and at a distance of half a mile ; that the Chester was moving at full speed ; that she was two and a half points off the starboard bow or right hand side of the Oceanic ; that immediately thereupon, pursuant to the rules of navigation, the master of the Oceanic sounded

two blasts of the steam whistle which meant "I am going to starboard my helm and pass to the left, you do the same"; that at the same time the helm of the Oceanic was put hard starboard; that the master of the Chester answered said signal with two blasts of his steam whistle, which meant that the Oceanic's signal was understood: that the helm of the Chester would be put starboard and that the vessel would also go to the left; that had the Chester acted on her starboard helm, as she had signaled she would do, the two vessels would have safely passed each other; that shortly after the first interchange of signals the Oceanic again sounded two blasts of her steam whistle, indicating that she was still starboarding her helm and going to the left, and that the Chester again answered with two similar blasts, indicating that she understood the Oceanic's signal, would starboard her helm and go to the left; that if, after such second interchange of signals, the Chester had starboarded her helm and gone to the left, as agreed, the vessels would have passed each other safely and there would have been no collision; that immediately after such second interchange of signals the master of the Oceanic observed that the Chester was not passing to the left pursuant to signal, but bore down upon the Oceanic as if under the influence of a port helm; that at the time such fact was observed, immediately after said second interchange of signals, the master of the Oceanic ordered the engines of the vessel to be put to "full speed astern," and that this order was immediately obeyed; that said order was given and obeyed about two minutes before said collision; that at the time of the giving and obeying of said order the Oceanic was going "dead slow"; that at

the time of the collision the Oceanic's headway had been stopped, and that she was beginning to move backward; that at the time the backwash from the propeller was coming forward and reached a point between the funnel and the bridge of the Oceanic; that the Chester slewed or swung around and struck the prow of the Oceanic and was so injured that she sank; that there was nothing left undone by the master of the Oceanic to avert the collision, and that the same occurred without any fault whatever on his part, or on the part of any one on board of the Oceanic.

9. The evidence proved that the Oceanic passed the tug Relief and the British ship Lord Wolsely about two miles outside of Point Bonita, an hour or more before the collision; that her course was then a northeasterly one; that she maintained that course, pointing for the northerly shore of the Golden Gate; that she passed into the Golden Gate from a quarter to a half mile from Point Bonita; that the officers of the Oceanic could see the loom of the land at Point Bonita through the fog; that she passed within a quarter of a mile from Point Diablo, and that the officers of the Oceanic could see the land at that point down the water's edge and for 20 feet above it; that they could see Lime Point; that they could not see any object on the southerly shore of the Golden Gate or the Bay of San Francisco; that it was usual and proper for vessels entering the harbor of San Francisco, on a flood tide, to come in on the northerly side of the channel; that the Oceanic came into port at a moderate speed; that she was carefully, prudently and ably handled and navigated; that her machinery, appliances, steering gear and equipments were in first-class order and condition;

10. The evidence proved that the Chester left her dock at about 9:15 A. M.; that after getting straightened out and headed down the bay her engines were going "full speed ahead;" that she encountered fog when opposite Black Point and began sounding her fog signal; that she heard and responded to the two-blast signal sounded by the Oceanic; indicating that she would starboard her helm and go to the left; that she responded to the second two-blast signal from the Oceanic, indicating that she understood the signal, could and would obey it and would go to the left; that she was a vessel of 1,100 tons register; that she had on board only 120 tons of freight and 115 passengers and a crew of 32 men; that a strong flood tide was running into the harbor of San Francisco through the Golden Gate, that the flood from the ocean struck the ocean shore below Fort Point and caused a tide rip or eddy which caused a powerful current to set across the channel in the direction of Lime Point; that said current had a velocity of five or six miles an hour; that when the Chester was opposite Fort Point and immediately before the second interchange of the two-blast signal the bow of the Chester was struck by said tide rip or eddy setting across said channel; that said tide rip or eddy caused the Chester to swing around and against the influence of her starboard helm and to take a northerly direction across said channel; that said tide rip or eddy so carried said Chester that she was thrown up and against the prow of the Oceanic, and was so injured that she sank; that after the Chester struck said tide rip or eddy, there was nothing that could have been done by those in charge of the Oceanic that was not done to avert a collision;

11. The evidence proved that the collision occurred at a point about a quarter of a mile from the north shore of the channel, and that the wreck of the Chester then sunk and now lies at a point near Lime Point, two-fifths of the width of channel from the northerly shore thereof and three-fifths of the distance from the San Francisco shore;

12. The evidence proved that there was no confusion or misunderstanding on the part of the master of the Chester or of the master of the Oceanic with respect to the signals interchanged; that the master of the Oceanic believed that the master of the Chester could and would do as he had agreed to do, viz: starboard his helm and go to the left; that there was nothing in the situation or in the conduct of the Chester to lead or cause the master of the Oceanic to think that the Chester would not or could not mind her helm and go to the left; that there was nothing in the situation or in the conduct of the Chester until she struck said tide rip or eddy and was deflected or turned from her agreed course, to cause the master of the Oceanic to believe that she would become unmanageable in said current or tide rip and would be carried across the bow of the Oceanic; that the master and pilot of the Oceanic were carefully and closely watching the Chester from the time she appeared in sight until she sank after the collision; that the moment it became evident that she was unmanageable or was not complying with her agreement to go to the left, they promptly adopted all possible means to avert a collision; that as soon as a risk of collision could possibly or reasonably be apprehended or known, the master of the Oceanic stopped and re-

versed his engines and caused them to go "full speed astern," and endeavored by every means in his power to avert a catastrophe;

13. The evidence proved that the officers of the Chester knew where she was; that they knew that the flood tide was coming in; that they knew of the tendency of the tide or current to set across the channel; that they knew whether or not they were able to navigate their vessel under all of the conditions then present; that they interchanged signals with the Oceanic, believing that they could manage their vessel pursuant to such signals; that the master of the Oceanic could not or did know anything about the Chester or the ability or inability of her officers to navigate her; that the master of the Oceanic had a right to assume that the officers of the Chester could and would navigate their vessel as agreed by the signals; that he had a right to assume that the officers of the Chester interchanged signals with the Oceanic in view of all of the circumstances and conditions then present, and to assume that such signals would be observed by the Chester; that as soon as he saw there was any doubt or difficulty respecting the course of the Chester, the master of the Oceanic promptly used all the means at his command and did all that was possible to avoid collision;

14. The evidence proved that the master of the Oceanic fully complied with the rules and laws of navigation in the conduct and navigation and management of his vessel; that he did nothing that he ought not to have done; that he failed to do nothing that he should have

done ; that, so far as the Oceanic was concerned, the accident was unavoidable.

W. H. L. BARNES AND
FRANK SHAY,

Proctors for respondent, the Occidental and
Oriental Steamship Company.

(Endorsed :) Filed May 1st, 1894.

SOUTHARD HOFFMAN, Clerk.

By J. S. MANLEY, Deputy Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

In Admiralty.

HENRY F. SMITH and GEO. C.
SMITH, Infants, by ELIZA A.
SMITH, their Guardian, and
ELIZA A. SMITH for herself, and
as Administratrix of the estate
of HENRY SMITH, deceased.

Libelants,

vs.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY (a corporation)
and PACIFIC COAST STEAMSHIP
COMPANY (a corporation),
Respondents and Appellants.

No. 10,732.

*To the Honorable United States Circuit Court of Appeals
for the Ninth Circuit :*

The appeal of the Occidental & Oriental Steamship
Company (a corporation), respondent above named, re-
spectfully shows :

That upon the 19th day of August, 1890, libelants filed their verified libel in which they prayed judgment against respondents for the sum of seventy-five thousand two hundred and seventy-five (\$75,275) dollars damages alleged to have been sustained by reason of the death of Henry Smith, the husband of libelant, Eliza A. Smith, and father of the other libelants, while a passenger on the steamship City of Chester, controlled and operated by the Pacific Coast Steamship Company (a corporation), one of the respondents above named, by reason of a collision occurring on the 28th day of August, 1888, at or near the entrance to the harbor of San Francisco, between said steamship and the steamship Oceanic, controlled and operated by the respondent, the Occidental & Oriental Steamship Company (a corporation), appellant herein, whereby said steamship, City of Chester, was sunk, and said Henry Smith drowned, and for costs of suit.

That thereupon the summons in said action was issued, and a copy thereof, together with a copy of said libel, served on respondent, the Occidental & Oriental Steamship Company (a corporation); whereupon the said respondent served on said libelants and filed with the clerk of said Court a demurrer to said libel, which said demurrer was thereafter and on the 29th day of January, 1891, by order of said Court overruled and said respondent allowed twenty (20) days thereafter in which to answer; that thereupon, in pursuance of said order, said respondent made and served upon said libelants, and on the 18th day of February, 1891, filed in said Court its said answer.

That on or about the first day of September, 1890, the Pacific Coast Steamship Company (a corporation), one of

the respondents above named, as charterer and lessee of the said steamship "City of Chester," filed a petition in this Court for a limitation of its liability under Section 4282-4289, Revised Statutes of the United States. Thereafter such proceedings were had that a decree was entered limiting the liability of said Pacific Coast Steamship Company (a corporation) to seventy-five (\$75.00) dollars, the appraised value of a small boat saved from the wreck of the "City of Chester"; whereupon said action was dismissed as to the Pacific Coast Steamship Company (a corporation), leaving said Occidental & Oriental Steamship Company (a corporation), this appellant, the only remaining respondent.

That said action was brought originally with a view to the libelants availing themselves of such common law remedy as this Court could afford by virtue of the Judiciary Act, but, by a stipulation entered into between the parties and filed September 7, 1893, it was agreed that said cause was an Admiralty cause *in personam*, and should be treated as such.

That thereafter the trial of said cause was had before said Court and the Hon. W. W. Morrow, Judge thereof, upon the pleadings and stipulation so as aforesaid made and proofs taken, and said cause was thereupon and on the 14th day of September, 1893, submitted to the said Court for its decision.

That thereafter and upon the 10th day of April, 1894, the said Court rendered and delivered in writing its decision, wherein it found the allegations of the libelant's libel to be true, except that it found the libelants had been damaged by said respondent, the Occidental & Oriental Steamship Company (a corporation), in the sum of ten

thousand (\$10,000) dollars, instead of the sum stated in said libel; and thereafter and on the 23d day of April, 1894, made and entered its decree in favor of said libelants and against said respondent, the Occidental & Oriental Steamship Company (a corporation), for the sum of ten thousand (\$10,000) dollars, with the legal interest thereon from the date thereof, together with libelant's costs of suit, taxed at \$

That thereafter the said respondent, this appellant, served upon Proctors for libelants, and on the 1st day of May, 1894, filed with the Clerk of said District Court, its assignment of errors and petition for, and thereupon obtained, an order from said United States District Court and the Honorable W. W. Morrow, Judge thereof, who tried said action, permitting appellant to make this appeal; whereupon this appellant served and filed with the Clerk of said Court its notice of appeal to said United States Circuit Court of Appeals for the Ninth Circuit.

That appellant is advised and insists that said decree is erroneous as said libelants were not and are not entitled to a decree in the sum named or in any sum whatsoever, or to any decree in its favor and against said respondent, this appellant, but on the contrary said respondent, this appellant, is entitled to a decree in its favor and against said libelants for its costs and for said and other reasons set forth in its assignment of errors, appeals from the whole of said final decree, and prays that this Court proceed and hear and examine said cause on the pleadings and proofs in said United States District Court made and taken, and such other proofs to be introduced, and that the said

final decree of said United States District Court be reversed.

W. H. L. BARNES AND
FRANK SHAY,

Attorneys for Respondent and Appellant, the
Occidental and Oriental Steamship Com-
pany (a Corporation).

[Endorsed:] Filed 1st day of May, A. D. 1894.

SOUTHARD HOFFMAN, Clerk.

*United States District Court, Northern District of Cali-
fornia.*

HENRY F. SMITH and GEO. C.
SMITH, Infants, by ELIZA A.
SMITH, for herself and as
Administratrix of Estate of
HENRY SMITH, deceased,

vs.

OCCIDENTAL AND ORIENTAL
STEAMSHIP Co., etc.

No. 10,732.

The Clerk of the above Court will proceed to make up and complete the transcript on appeal in the above entitled and numbered cause.

May 1, 1894.

W. H. L. BARNES AND
FRANK SHAY,

Proctors for Respondent and Appellant.

[Endorsed:] Filed May 1st, 1894.

SOUTHARD HOFFMAN, Clerk.

In the District Court of the United States, in and for the Northern District of California.—In Admiralty.

HENRY F. SMITH and GEO. C. SMITH, Infants, by ELIZA A. SMITH, their Guardian, and ELIZA A. SMITH, for herself and as Administratrix of Estate of HENRY SMITH, deceased,

vs. Libelants,

OCCIDENTAL AND ORIENTAL STEAMSHIP COMPANY, a Corporation, and PACIFIC COAST STEAMSHIP COMPANY, a Corporation,

Respondents.

No. 10,732.

To the Clerk of said Court, Libelants herein and Clinton L. White Esq., and Wm. H. Cobb, Esq., their proctors.

You, and each of you take notice that the Occidental & Oriental Steamship Company, a corporation, respondent herein intends to and does hereby appeal from the final decree in said cause made and entered on the 23rd. day of April, 1894, to the United States Circuit Court of Appeals for the Ninth Circuit.

W. H. L. BARNES AND
FRANK SHAY,

Proctors for Respondents, the Occidental & Oriental Steamship Company, a Corporation.

Service of a copy of the within Notice of Appeal hereby admitted, this 2nd. day of May, A. D. 1894.

CLINTON L. WHITE AND
WILLIAM H. COBB,

Proctors for Libelants.

[Endorsed:] Filed May 2nd, 1894.

SOUTHARD HOFFMAN, Clerk.

In the District Court of the United States, in and for the Northern District of California.—In Admiralty.

HENRY F. SMITH and GEO. C. SMITH, Infants, by ELIZA A. SMITH their Guardian, and ELIZA A. SMITH, for herself and as Administratrix of the Estate of Henry Smith, deceased,

Libelants,

vs.

OCCIDENTAL & ORIENTAL STEAMSHIP COMPANY (a Corporation), and PACIFIC COAST STEAMSHIP COMPANY (a Corporation),

Respondents.

} No. 10,732.

KNOW ALL MEN BY THESE PRESENTS, that we, the Occidental & Oriental Steamship Company (a corporation), as principal, and Charles F. Crocker and A. N. Towne, as sureties, are held and firmly bound unto the above-named libelants in the full and just sum of two thousand dollars, to be paid to the said libelants, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of May in the year of our Lord one thousand eight hundred and ninety-four.

WHEREAS, lately, at a session of said District Court in a suit pending in said Court between Henry F. Smith and Geo. C. Smith, infants, by Eliza A. Smith, their Guardian, and Eliza A. Smith for herself and as administratrix of the estate of Henry Smith, deceased, libelants, and said Occidental & Oriental Steamship Company (a corporation), respondent, a final decree was rendered, made and entered against the said respondent, the Occidental & Oriental Steamship Company (a corporation), and the said respondent having obtained an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and filed the same in the Clerk's office of said District Court, to reverse the decree in the aforesaid suit, and a citation being about to issue, directed to said libelants, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on a day to be therein specified.

Now, THEREFORE, the condition of said obligation is such that if the said Occidental & Oriental Steamship Company (a corporation), shall prosecute said appeal to effect, and answer all costs and damages if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

OCCIDENTAL & ORIENTAL STEAMSHIP
[SEAL.] COMPANY (a Corporation).

By D. D. STUBBS, its Secretary. [SEAL.]

CHAS. F. CROCKER. [SEAL.]

A. N. TOWNE. [SEAL.]

NORTHERN DISTRICT OF CALIFORNIA, }
 City and County of San Francisco. }^{SS.}

Charles F. Crocker and A. N. Towne, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, says: That he is worth the amount specified in said undertaking, over and above his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident and a freeholder within the said District.

CHAS. F. CROCKER [SEAL.]

A. N. TOWNE [SEAL.]

Subscribed and sworn to before me, this 2nd day of May, 1894.

[SEAL.]

E. B. RYAN, Notary Public.

Form of bond and sufficiency of sureties approved this 2nd. day of May, 1894.

WM. W. MORROW,

Judge of said District Court

[Endorsed:] Filed May 2nd., 1894.

SOUTHARD HOFFMAN, Clerk.

In the United States District Court, Northern District of California.

HENRY F. SMITH, ET AL.,

Appellees.

vs.

OCCIDENTAL AND ORIENTAL STEAM-
SHIP COMPANY,

Appellant.

It is hereby stipulated by and between the Proctors for the respective parties that the original exhibits, maps, photographs and drawings, and models used upon the trial of the above entitled action in the United States District Court, Northern District of California, may be transmitted to the Circuit Court of Appeals for the Ninth Circuit, with the Apostles in the said action, without being attached thereto, and that said exhibits, maps, photographs, drawings and models need not be printed in the printed record in said cause.

Dated July 31st., 1894.

CLINTON L. WHITE, AND
WM. H. COBB,

Proctors for Appellees.

W. H. L. BARNES AND
FRANK SHAY,

Proctors for Appellant.

[Endorsed :] Filed July 31st., 1894.

SOUTHARD HOFFMAN, Clerk.

District Court of the United States, Northern District of California.

HENRY F. SMITH, ET AL.,

vs.

OCCIDENTAL AND ORIENTAL
STEAMSHIP COMPANY.

No. 10,732.

ACCRUING CLERK'S COSTS.

1894—

May 1st....	Filed Petition for Allowance of Appeal.....	\$.20
	Filed Order Allowing Appeal, &c20
	Filed Assignment of Errors20
	Filed Formal Appeal20
2nd....	Filed Notice of Appeal.....	.20
	Filed Supersedeas Bond20
	Filed Approval of Bond.....	.20
July 31st...	Filed Stipulation as to Exhibits, &c ..	.20
	Filed Citation on Appeal20
	Making Transcript on Appeal, 1100 ffs. at 20c	220.00
	Making copy Transcript on Appeal for printer, 1100 ffs. at 10c	110.00
	Seal and Certificate to Transcript.....	.70
	Filed Clerk's Accruing Bill Costs20
	Filed Receipt for Transcript.....	.20
		<hr/>
		\$333.10

Clerk's accruing costs taxed at \$333.10.

SOUTHARD HOFFMAN, Clerk.

[Endorsed:] Filed July 31st, 1894.

SOUTHARD HOFFMAN, Clerk.

UNITED STATES OF AMERICA, }
Northern District of California. } ss.

I, Southard Hoffman, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing and hereunto annexed three hundred and ninety-eight pages, numbered from 1 to 398 inclusive, contain a full, true and correct transcript of the record in said District Court in the cause entitled, "Henry F. Smith and Geo. C. Smith, Infants, by Eliza A. Smith, their Guardian, and Eliza A. Smith for herself and as Administratrix of the Estate of Henry Smith, deceased, vs. Occidental and Oriental Steamship Company, a corporation," made up pursuant to Rule 52 of the Rules of the Supreme Court of the United States.

Witness my hand and seal of said Court at San Francisco, this 14th day of August, A. D. 1894.

(Seal.)

SOUTHARD HOFFMAN, Clerk.

